SUPREME COURT OF THE STATE OF CONNECTICUT

SC 20237

LIME ROCK PARK, LLC, PLAINTIFF/APPELLEE

٧.

PLANNING AND ZONING COMMISSION
OF THE TOWN OF SALISBURY,
DEFENDANT/APPELLEE
AND
LIME ROCK CITIZENS COUNCIL, LLC,
INTERVENING DEFENDANT/APPELLANT

JOINT APPENDIX PART ONE

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ATTORNEYS FOR INTERVENING

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LIME ROCK CITIZENS COUNCIL, LLC

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KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Connecticut General Statutes Annotated
Title 8. Zoning, Planning, Housing and Economic and Community Development (Refs & Annos)
Chapter 124. Zoning (Refs & Annos)

C.G.S.A. § 8-2

§ 8-2. Regulations

Effective: July 1, 2018 Currentness

(a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses, as defined in section 22a-93, and the height, size, location, brightness and illumination of advertising signs and billboards. Such bulk regulations may allow for cluster development, as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture, as defined in subsection (q) of section 1-1. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with

reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150. including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family child care home or group child care home in a residential zone. No such regulations shall prohibit the use of receptacles for the storage of items designated for recycling in accordance with section 22a-241b or require that such receptacles comply with provisions for bulk or lot area, or similar provisions, except provisions for side yards, rear yards and front yards. No such regulations shall unreasonably restrict access to or the size of such receptacles for businesses, given the nature of the business and the volume of items designated for recycling in accordance with section 22a-241b, that such business produces in its normal course of business, provided nothing in this section shall be construed to prohibit such regulations from requiring the screening or buffering of such receptacles for aesthetic reasons. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twentytwo feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twentytwo feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations or require a special permit or special exception for any such continuance. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Such regulations shall not terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure. Unless such town opts out, in accordance with the provisions of subsection (j) of section 8-1bb, such regulations shall not prohibit the installation of temporary health care structures for use by mentally or physically impaired persons in accordance with the provisions of section 8-1bb if such structures comply with the provisions of said section. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

(b) In any municipality that is contiguous to Long Island Sound the regulations adopted under this section shall be made with reasonable consideration for restoration and protection of the ecosystem and habitat of Long Island Sound and shall be designed to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound. Such regulations shall provide that the commission consider the environmental impact on Long Island Sound of any proposal for development.

- (c) In any municipality where a traprock ridge, as defined in section 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located the regulations may provide for development restrictions in ridgeline setback areas, as defined in said section. The regulations may restrict quarrying and clear cutting, except that the following operations and uses shall be permitted in ridgeline setback areas, as of right: (1) Emergency work necessary to protect life and property; (2) any nonconforming uses that were in existence and that were approved on or before the effective date of regulations adopted under this section; and (3) selective timbering, grazing of domesticated animals and passive recreation.
- (d) Any advertising sign or billboard that is not equipped with the ability to calibrate brightness or illumination shall be exempt from any municipal ordinance or regulation regulating such brightness or illumination that is adopted by a city, town or borough after the date of installation of such advertising sign or billboard pursuant to subsection (a) of this section.

Credits

(1949 Rev., § 837; Nov., 1955, Supp. § N 10; 1959, P.A. 614, § 2; 1959, P.A. 661; 1961, P.A. 569, § 1; 1963, P.A. 133; 1967, P.A. 801; 1977, P.A. 77-509, § 1; 1978, P.A. 78-314, § 1; 1980, P.A. 80-327, § 1; 1981, P.A. 81-334, § 2; 1983, P.A. 83-388, § 6, eff. July 1, 1985; 1984, P.A. 84-263; 1985, P.A. 85-91, § 2, eff. May 1, 1985; 1985, P.A. 85-279, § 3; 1987, P.A. 87-215, § 1, eff. July 1, 1987; 1987, P.A. 87-232; 1987, P.A. 87-474, § 1; 1987, P.A. 87-490, § 1; 1988, P.A. 88-105, § 2; 1988, P.A. 88-203, § 1; 1989, P.A. 89-277, § 1, eff. Oct. 1, 1989; 1991, P.A. 91-170, § 1; 1991, P.A. 91-392, § 1; 1991, P.A. 91-395, § 1, eff. July 1, 1991; 1992, P.A. 92-50; 1993, P.A. 93-385, § 3; 1995, P.A. 95-239, § 2; 1995, P.A. 95-335, § 14, eff. July 1, 1995; 1997, P.A. 97-296, § 2, eff. July 8, 1997; 1998, P.A. 98-105, § 3; 2010, P.A. 10-87, § 4; 2011, P.A. 11-124, § 2; 2011, P.A. 11-188, § 3; 2015, P.A. 15-227, § 25, eff. July 1, 2015; 2017, P.A. 17-39, § 1, eff. July 1, 2017; 2017, P.A. 17-155, § 2; 2018, P.A. 18-28, § 1, 2, eff. July 1, 2018; 2018, P.A. 18-132, § 1, eff. July 1, 2018.)

Notes of Decisions (846)

C. G. S. A. § 8-2, CT ST § 8-2

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 8. Zoning, Planning, Housing and Economic and Community Development (Refs & Annos)
Chapter 124. Zoning (Refs & Annos)

C.G.S.A. § 8-13

§ 8-13. Controlling requirement in case of variation

Currentness

If the regulations made under authority of the provisions of this chapter require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required in any other statute, bylaw, ordinance or regulation, the provisions of the regulations made under the provisions of this chapter shall govern. If the provisions of any other statute, bylaw, ordinance or regulation require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required by the regulations made under authority of the provisions of this chapter, the provisions of such statute, bylaw, ordinance or regulation shall govern.

Credits (1949 Rev., § 847.)

Notes of Decisions (3)

C. G. S. A. § 8-13, CT ST § 8-13

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 14. Motor Vehicles. Use of the Highway by Vehicles. Gasoline (Refs & Annos)
Chapter 246. Motor Vehicles (Refs & Annos)
Part VII. General Provisions

C.G.S.A. § 14-164a

§ 14-164a. Motor vehicle racing

Currentness

- (a) No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances. The person conducting such race or exhibition shall provide for first-aid and medical supplies and equipment, including ambulances, and the attendance of doctors or other persons qualified to give emergency medical aid, police and fire protection, and such other requirements as will eliminate any unusual hazard to participants in such race or exhibition or to the spectators. Smoking or carrying a lighted smoking implement shall be prohibited in any area where fuel is stored or transferred. Each facility, other than a motor cross racing facility, where racing is conducted shall contain restricted areas which shall be posted with notice that only persons with the appropriate credentials may be admitted to such restricted areas. Areas of the facility subject to this requirement shall include, but need not be limited to, the pit area and pit lane, track, media area or areas and any other area that is unprotected from participating vehicles.
- (b) No minor under the age of sixteen years may participate in motor cross racing, except that a minor thirteen years of age or older may participate in such racing with the written permission of the minor's parents or legal guardian. If weather or track conditions are such as to make such race or exhibition unusually hazardous, the person conducting such race or exhibition shall cancel or postpone the same or may require the use of tires of a type manufactured for such adverse conditions. No person shall conduct or participate in any motor vehicle race or contest or demonstration of speed or skill in any motor vehicle on the ice of any body of water. The provisions of this section shall not apply to a motor vehicle with a motor of no more than three horsepower or a go-cart-type vehicle with a motor of no more than twelve horsepower, when operated on a track of one-eighth of a mile or less in length. Preliminary preparations and practice runs, performed after eleven o'clock in the forenoon, on the date designated in the permit and prior to cancellation or postponement, shall not be construed to constitute a race or exhibition within the meaning of this section. No preliminary preparations or practice runs shall be performed before twelve o'clock noon on Sunday. For the purposes of this subsection, "motor cross racing" means motorcycle racing on a dirt track by participants operating motorcycles designed and manufactured exclusively for off-road use and powered by an engine having a capacity of not more than five hundred cubic centimeters piston displacement.
- (c) The Commissioner of Motor Vehicles shall adopt regulations, in accordance with chapter 54, ¹ concerning mandatory safety equipment for vehicles that participate in any race or exhibition conducted in accordance with the provisions of this section. Such regulations shall require any equipment necessary for the protection of drivers.

(d) Any person participating in or conducting any motor vehicle race or exhibition contrary to the provisions of this section shall be fined not more than two hundred dollars or imprisoned not more than six months, or both.

Credits

(1949 Rev., § 3727; 1953, Supp. § 1523c, eff. July 1, 1953; 1955, Supp. § 2020d, eff. May 24, 1955; 1957, P.A. 213, § 1; 1958 Rev., § 29-143; 1961, P.A. 359; 1963, P.A. 432; 1971, P.A. 384; 1973, P.A. 73-672, §§ 1, 2; 1975, P.A. 75-404, § 1, eff. July 1, 1975; 1984, P.A. 84-254, § 50, eff. July 1, 1984; 1985, P.A. 85-298, § 1, eff. July 1, 1985; 1991, June Sp.Sess., P.A. 91-13, § 13, eff. Sept. 6, 1991; 1994, P.A. 94-189, § 27, eff. July 1, 1994; 1998, P.A. 98-182, § 3, eff. July 1, 1998; 2001, June Sp.Sess., P.A. 01-9, § 84, eff. July 1, 2001; 2003, June 30 Sp.Sess., P.A. 03-3, § 37, eff. Aug. 20, 2003; 2004, P.A. 04-199, § 11, eff. June 3, 2004; 2005, P.A. 05-218, § 41, eff. July 1, 2005.)

Footnotes

1 C.G.S.A. § 4-166 et seq.

C. G. S. A. § 14-164a, CT ST § 14-164a

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Help Manual

C LLI-CV15-6013033-S Prefix/Suffix: [none]

File Date: 12/08/2015

LIME ROCK PARK, LLC v. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI

Case Type: A00

Return Date: 12/22/2015

Case Detail **Scheduled Court Dates** Notices

To receive an email when there is activity on this case, click here is

Select Case Activity:

E-File a Pleading or Motion 🗸

***All Court events scheduled to occur on and after August 28, 2017 will take place at the new Litchfield Judicial District Courthouse at Torrington, located at 50 Field Street, Torrington, CT.**

Information updated as of: 02/28/2019

Case Information

Case Type: A00 - Appeals - Zoning

Court Location: Litchfield JD List Type: No List Type

Trial List Claim:

Last Action Date: 01/23/2019 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 07/17/2018

Disposition: JUDGMENT AFTER COMPLETED TRIAL TO THE COURT WITH NO JURY

Judge or Magistrate: HON JOHN MOORE

Party & Appearance Information

Party

No Fee Category Party

Plaintiff

Party

Defendant Government Entity

Party Type Firm or

Corporation

P-01 LIME ROCK PARK, LLC

Attorney: & CARMODY TORRANCE SANDAK & HENNESSEY LLP (008512) File Date; 12/08/2015

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D-02 LIME ROCK CITIZENS COUNCIL, LLC

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ONE CONSTITUTION PLAZA

HARTFORD, CT 06103

File Date: 01/19/2016

Defendant Firm or

Corporation

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an $\mathcal C$ in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.
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- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*

An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

	Motions / Pleadings / Documents / Case Status					_		
Entry No	File Date	Filed By	Description			,	,	Arguable
	12/23/2015	D	APPEARANCE (5) Appearance	,		·		

	01/19/2016 D	APPEARANCE Appearance	
	01/19/2016	APPEARANCE 🗐	
	12/02/2016	CLAIM/RECLAIM [□] Claim/Reclaim	
100,30	12/08/2015 P	SUMMONS AND COMPLAINT []	No
100.31	12/08/2015 P	RETURN OF SERVICE 🗊	No
101.00	12/23/2015 D	LAND USE LITIGATION APPLICATION TO RESULT: Denied 1/6/2016 HON MARSHALL BERGER	. No
101.10	01/06/2016 C	ORDER RESULT: Denied 1/6/2016 HON MARSHALL BERGER	No
102,00	01/05/2016 P	OBJECTION TO TRANSFER TO LAND USE LITIGATION DOCKET	No
103.00	01/19/2016 O	MOTION TO INTERVENE 🗒	No
103.01	05/16/2016 C	ORDER 등 RESULT: Granted 5/16/2016 HON JOHN MOORE Last Updated: Entry Number - 05/17/2016	No .
104.00	01/19/2016 O	MEMORANDUM IN SUPPORT OF MOTION □	No
105.00	01/20/2016 D	MOTION FOR PERMISSION TO WITHDRAW APPEARANCE	Yes
105.01	01/21/2016 C	ORDER	No
106.00	01/20/2016 O	MEMORANDUM IN SUPPORT OF MOTION Memorandum of Law in Support of Motion to Intervene	No
107.00	01/22/2016 C	ORDER 등 RESULT: Order 1/22/2016 HON JOHN MOORE	No .
108.00	02/02/2016 P	OBJECTION TO MOTION DO Objection to Lime Rock Citizen Council, LLC's Motion to Intervene	, No
108.01	05/16/2016 C	ORDER 등 RESULT: Overruled 5/16/2016 HON JOHN MOORE Last Updated: Entry Number - 05/17/2016	No
09.00	02/08/2016 D	MEMORANDUM 🗐	No
110.00	02/09/2016 O	REPLY [] to Objection to Motion to Intervene as Party Defendant (No. 108.00)	No
11,00	05/31/2016 P	MOTION TO REARGUE/RECONSIDER PRe: Docket Entries # 103.00 and 108.00	No
11.10	06/27/2016 C	ORDER RESULT: Denied 6/27/2016 HON JOHN MOORE	No
12.00	06/07/2016 D	OBJECTION to Motion to Reargue (No. 111.00)	No
12.10	06/27/2016 C	ORDER RESULT: Sustained 6/27/2016 HON JOHN MOORE	No
13.00	07/14/2016 P	SCHEDULING ORDER 등 Joint Motion for Entry of Scheduling Order	No .
13.10	07/18/2016 C	ORDER RESULT: Order 7/18/2016 HON JOHN MOORE	No
14.00	08/12/2016 D	ANSWER 🗒	No
15.00	08/15/2016 D	CERTIFIED LIST OF PAPERS IN THE RECORD PB 14-7A(b)/14-7B(b)	. No
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17.00	08/15/2016 D	EX. 10-1 through 10-30	No
18.00	08/15/2016 D	EX. 11 through Ex. 15	No
19.00	08/15/2016 D	EX. 16-031 through 16-400	No
20,00	08/15/2016 D	EXHIBITS	No
21.00	08/15/2016 D	EXHIBITS Ex. 16-500 through 16-599	No
22.00	08/15/2016 D	EXHIBITS 🗒	No

123.00	08/15/2016 D	EXHIBITS (5)	No
124.00	08/15/2016 D	Ex. 16-800 through Ex. 16-848	No
		EX. 17 through 35	NO
125.00	08/15/2016 D	ANSWER (F) OF DEFENDANT TO DECEMBER 4, 2015 APPEAL OF LIME ROCK PARK, LLC	No ·
126.00	08/24/2016 D	AMENDED ANSWER Amended Answer of Int. Def. Lime Rock Citizens Council, LLC to 12/4/15 Appeal of Lime Rock Park, LLC	No ,
127.00	09/15/2016 P	BRIEF Brief of the Plaintiff, Lime Rock Park, LLC	No
128.00	09/27/2016 C	ORDER	No
129.00	10/11/2016 D	MOTION FOR PERMISSION TO FILE ADDITIONAL DISCOVERY REQUESTS PB SEC 13-9(a) Motion of Intervening Defendant for Permission to Conduct Discovery Regarding Aggrievement RESULT: Order 11/3/2016 HON JOHN MOORE Last Updated: Result Information - 11/03/2016	No
129.10	10/24/2016 C	ORDER 등 RESULT: Order 10/24/2016 HON JOHN PICKARD	No
130.00	10/14/2016 D	MOTION FOR EXTENSION OF TIME TO FILE BRIEF 同RESULT: Granted 11/3/2016 HON JOHN MOORE	No
130.10	11/03/2016 C	ORDER FRANCE RESULT: Granted 11/3/2016 HON JOHN MOORE	No
131.00	10/19/2016 P	OBJECTION Response to Intervenor's Motion to Conduct Discovery RESULT: Order 11/3/2016 HON JOHN MOORE	No
132.00	10/19/2016 P	MOTION FOR PERMISSION TO FILE ADDITIONAL DISCOVERY REQUESTS PB SEC 13-9(a) 同 Motion of Plaintiff for Permission to Conduct Discovery re: Aggrievement RESULT: Order 11/3/2016 HON JOHN MOORE	No
133.00	10/19/2016 P	CASEFLOW REQUEST (JD-CV-116) per Court order re: Pretrial/Settlement Conference dates	No
133.10	10/26/2016 C	ORDER	No
134.00	10/19/2016 D	BRIEF LRCC Appeal Brief	No
135.00	10/19/2016 D	EXHIBITS	No
136.00	10/19/2016 D	BRIEF of Defendant Planning & Zoning Commission of the Town of Salisbury	No
137.00	10/28/2016 P	MOTION FOR PERMISSION TO FILE BRIEF Motion to File Reply Brief in Excess of Ten Pages	No
138.00	11/02/2016 P	BRIEF 등 Reply Brief of the Plaintiff Lime Rock Park, LLC	No
139.00	11/03/2016 C	ORDER	No
140.00	11/07/2016 D	MOTION TO MODIFY - GENERAL Mot. of Int. Def. Lime Rock Citizens Council LLC to Modify Pretrial Settlement Conference Order	No
40.10	11/21/2016 C	ORDER RESULT: Off 11/21/2016 HON JOHN MOORE	No
41.00	11/16/2016 D	MOTION FOR PERMISSION TO FILE ADDITIONAL DISCOVERY REQUESTS PB SEC 13-9(a) Motion for Approval of Discovery Requests (Filed as Supplement to Entry No. 129.00)	No ·
41.01	11/28/2016 C	ORDER	No
42.00	11/17/2016 P	MOTION FOR PERMISSION TO FILE ADDITIONAL DISCOVERY REQUESTS PB SEC 13-9(a) Motion for Approval of Discovery Requests (filed as supplement to Entry Nos. 131.00 and 132.00) RESULT: Granted 12/22/2016 HON JOHN MOORE	No
42.10	12/22/2016 C	ORDER	No
43.00	11/18/2016 C	ORDER 即 RESULT: Order 11/18/2016 HON JOHN MOORE	No
44,00	12/12/2016 D	NOTICE OF LIME ROCK CITIZENS COUNCIL, LLC's WAIVER REGARDING DISQUALIFICATIONS	No
45.00	12/13/2016 P	WAIVER - GENERAL ®	No

146.00	12/14/2016 D	WAIVER - GENERAL 🗒	No
		Salisbury P & Z's Waiver Regarding Disqualification	
147.00	12/15/2016 C	ORDER 등 RESULT: Order 12/15/2016 HON JOHN PICKARD	No
148.00	02/16/2017 P	LETTER 🗐	No
49.00	05/05/2017 P	MOTION IN LIMINE 🗒	No
150.00	05/10/2017 C	LIST OF EXHIBITS (JD-CL-28/JD-CL-28a)	No
151.00	08/29/2017 C	ORDER 등 RESULT: Order 8/29/2017 HON JOHN MOORE	No ·
151,10	08/29/2017 C	ORDER	No
152.00	08/30/2017 C	ORDER 등 RESULT: Order 8/30/2017 HON JOHN MOORE	No
153.00	09/07/2017 C	ORDER RESULT: Order 9/7/2017 HON JOHN MOORE	No
154.00	09/11/2017 P	MEMORANDUM Supplemental Brief of Plaintiff Lime Rock Park, LLC (re: order #152.00)	No
155.00	09/11/2017 D	MEMORANDUM Supplemental Brief of Salisbury Planning & Zoning Commission [re Order 152.00]	No
156.00	09/13/2017 D	CASEFLOW REQUEST (JD-CV-116) F	No
156.10	09/14/2017 C	ORDER F RESULT: Order 9/14/2017 HON JOHN MOORE	No
157.00	09/25/2017 C	ORDER 5 ' RESULT: Order 9/25/2017 HON JOHN MOORE	No
158.00	09/26/2017 D	NOTICE Intervening Defendant's Notice of Supplemental Authority	No
159.00	09/26/2017 C	ORDER PRESULT: Order 9/26/2017 HON JOHN MOORE	No
160.00	09/27/2017 D	CASEFLOW REQUEST (JD-CV-116) Request for Additional Argument pursuant to Order 157.00	No
160.10	09/29/2017 C	ORDER FRESULT: Granted 9/29/2017 HON JOHN MOORE	No
161.00	10/06/2017 D	NOTICE OF COMPLIANCE with Court Order 435704 [159.00] with Tabs A - L	No
162.00	10/06/2017 P	MOTION FOR ORDER Motion re: Additional Documents Responsive or Relevant to Court Order #435704	No
63.00	10/09/2017 C	ORDER D RESULT: Order 10/9/2017 HON JOHN MOORE	No
64.00	10/10/2017 C	LIST OF EXHIBITS (JD-CL-28/JD-CL-28a)	No
65.00	01/31/2018 C	MEMORANDUM OF DECISION 🗐	No
66.00	01/31/2018 C	JUDGMENT AFTER COMPLETED TRIAL TO THE COURT WITH NO JURY RESULT: HON JOHN MOORE	No
67.00	02/20/2018 D	MOTION TO REARGUE/RECONSIDER RESULT: Order 2/27/2018 HON JOHN MOORE	No
68,00	02/20/2018 D	MEMORANDUM IN SUPPORT OF MOTION 同 To Reargue	No
69.00	02/20/2018 D	MOTION TO REARGUE/RECONSIDER (No. 165)	No
70.00	02/20/2019 D	RESULT: Order 2/27/2018 HON JOHN MOORE	k+-
/ U.UU	02/20/2018 P	MOTION TO REARGUE/RECONSIDER (5) RESULT: Order 2/27/2018 HON JOHN MOORE	No
71.00	02/27/2018 C	ORDER	No
72.00	02/28/2018 P	OBJECTION TO MOTION Objection to Commission's Motion to Reargue (Dkt. 167.00)	No
73.00	02/28/2018 P	OBJECTION TO MOTION Objection to Council's Motion to Reargue (Dkt. 169.00)	No
74.00	02/28/2018 D	MEMORANDUM IN OPPOSITION TO MOTION	No

		to Reargue Filed by Plaintiff	
175.00	03/02/2018	D OBJECTION TO MOTION	·No
176.00	03/02/2018	D CASEFLOW REQUEST (JD-CV-116)	No
176,10	03/05/2018	C ORDER 同 RESULT: Granted 3/5/2018 HON JOHN MOORE	No
177.00	03/06/2018	D EXHIBITS	No
178.00	03/08/2018	P REPLY MEMORANDUM 同 Reply to Objection to Motion to Reargue (Dkt. 174.00)	No
179.00	03/12/2018	D REPLY 同 to Lime Rock's Objection to the Commission's Motion to Reargue	No
180.00	03/13/2018	MOTION FOR PERMISSION TO SUPPLEMENT THE RECORD IN ADMINISTRATIVE APPEAL RESULT: Denied 3/20/2018 HON JOHN MOORE	No
180.10	03/20/2018	C ORDER 同 RESULT: Denied 3/20/2018 HON JOHN MOORE	No
181.00	04/10/2018	C ORDER	No
182.00	04/18/2018		No
183.00	04/24/2018	C ORDER F RESULT: Order 4/24/2018 HON JOHN MOORE	No
184.00	05/03/2018	NOTICE OF COMPLIANCE S with Court Order 435704 [Docket Entry 183.00]	Na
185.00	07/11/2018	C ORDER	No
186,00	07/17/2018	C MEMORANDUM OF DECISION [□] Amended	No
187.00	07/17/2018	C REPLACE RECORD TO PLEADING STATUS (KEYPOINT 2) AND ERASE ALL HIGHER KEYPOINT DATES	No
188.00	07/17/2018(C JUDGMENT AFTER COMPLETED TRIAL TO THE COURT WITH NO JURY RESULT: HON JOHN MOORE	No
188.50	08/03/2018 [PETITION FOR CERTIFICATION RESULT: Granted 9/21/2018 BY THE COURT	No
188.55	09/21/2018(ORDER ENTERED RESULT: Granted 9/21/2018 BY THE COURT	No
189.00	08/03/2018	PETITION FOR CERTIFICATION FOR RESULT: Granted 9/21/2018 BY THE COURT	No
189,50	09/21/2018(ORDER ENTERED F RESULT: Granted 9/21/2018 BY THE COURT	No
190,00	08/09/2018 F	PETITION FOR CERTIFICATION 国 RESULT: Granted 9/21/2018 BY THE COURT	No
190,50	09/21/2018	ORDER ENTERED F RESULT: Granted 9/21/2018 BY THE COURT	No
191.00	09/21/2018 (APPEAL TO SUPREME COURT 🗐	No
192.00	09/27/2018	APPEAL TO APPELLATE COURT 🗐	No
193.00	10/02/2018 F	APPEAL TO APPELLATE COURT ALL FEES PAID 🕏	No
194.00	10/02/2018		No
195.00	01/17/2019		No
196.00	01/17/2019 (No

			Scheduled Court Dates as of 02/27/2019	
	LLI-CV	15-6013033-S - LIME	ROCK PARK, LLC v. PLANNING AND ZONING C	OMMISSION OF THE TOWN OF SALI
#	<u>Date</u>	<u>Time</u>	Event Description	Status
			No Events Scheduled	

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information

about an ADR event, select the Notices tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the <u>civil@</u> or <u>family@</u> standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the <u>Civil/Family Case Look-Up@</u> page and <u>Short Calendars By Juris Number@</u> or <u>By Court Location@</u>.

Periodic changes to terminology that do not affect the status of the case may be made. This list does not constitute or replace official notice of scheduled court events.

Disclaimer: For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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RETURN DATE: DECEMBER 22, 2015

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT LITCHFIELD

PLANNING AND ZONING COMMISSION OF

THE TOWN OF SALISBURY

DECEMBER 4, 2015

APPEAL

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF LITCHFIELD, 15
West Street, Litchfield, Connecticut 06759, ON THE FOURTH TUESDAY OF DECEMBER,
2015, (DECEMBER 22, 2015), comes LIME ROCK PARK, LLC of 497 Lime Rock Road,
Lakeville (Town of Salisbury), CT 06039 appealing under Connecticut General Statutes Sections
8-8 and 8-9 from a decision of the defendant PLANNING AND ZONING COMMISSION OF
THE TOWN OF SALISBURY enacting certain amendments to the Salisbury Zoning
Regulations. Plaintiff complains and says:

The defendant, Planning and Zoning Commission of the Town of Salisbury (the
"Commission"), is the duly authorized body of the Town of Salisbury, a
Connecticut municipality, situated in Litchfield County, having all the powers and
duties set forth in the Connecticut General Statutes, including Chapter 124 of the

{W2617474}

- Connecticut General Statutes ("C.G.S."), relating to municipal zoning commissions and their members.
- 2. This appeal is from amendments to the Salisbury Zoning Regulations, proposed by the Commission on or before July 20, 2015 and modified and adopted by the Commission on November 16, 2015. Notice of the adoption of the amendments was published in the Waterbury Republican-American on November 24, 2015, within 15 days of the taking of this appeal.
- 3. The amendments pertain to the operation of race tracks and uses accessory to race tracks, within an area classified by the Salisbury Zoning Regulations as a Rural Enterprise ("RE") District.
- 4. The plaintiff, Lime Rock Park, LLC ("LRP") owns property located at 497 Lime Rock Road, Lakeville (Town of Salisbury, Connecticut 06039 (the "Property"), within the RE district.
- Motor vehicle racing, contests and demonstrations of speed and skill have been conducted at the Property since 1957 on a race track known then as the Lime Rock Race Track and now as Lime Rock Park (the "Track"). In 1957, such activities were conducted on all days of the week, including Sundays.

- 6. Activities accessory to the Track in 1957 included, among other things, automobile shows and exhibitions for auto sales, automotive repair and auto repair pits, lunch counters and stands, camping in all areas of the Property, television, movie, radio production, and lighting and sound equipment.
- 7. On June 8, 1959, the Commission adopted zoning regulations (the "1959 Regulations").
- 8. Section 2.1. of the 1959 Regulations divided the Town of Salisbury into various classes of districts including the RE District, designated as "RUE-80".
- 9. The boundaries of the various districts were depicted on the "Building Zone Map of the Town of Salisbury," dated June 8, 1959, which map was incorporated into the 1959 Regulations through Section 2.2 thereof.
- 10. The LRP Property was virtually the only parcel in the RE District when it was created in 1959. It continues to be virtually the only parcel in the RE District today.
- 11. From 1957 to the present, the Track has been the only race track in the RE District or the Town of Salisbury.
- 12. Section 411.21 of the 1959 Regulations listed "a track for racing motor vehicles" among the "Uses Permitted in [RE] Districts."

- 13. Specifically, the 1959 Zoning Regulations permitted "[a] track for racing motor vehicles, excluding motorcycles, to which admission may be charged, and for automotive education and research in safety and for performance testing of a scientific nature."
- 14. The 1959 Regulations also permitted uses accessory to a race track: "Accessory uses may include grandstands, judges' stands, automobile repair pits, rest rooms, lunch counters or stands. Accessory uses may also include use of the premises for automobile shows and exhibitions, for the sale of motor vehicles, automotive parts and accessories and fuels, for manufacturing and automotive repair incident to the other activities herein permitted. Other accessory uses may also include the production of television, motion picture or radio programs and the use of necessary lighting and sound equipment therefor."
- 15. Unlike some uses in the 1959 Regulations which were only allowed "when specifically approved, after a public hearing, by the [Commission] as conditional uses and subject to such conditions as the Commission may establish" (for instance, uses in Section 4.1.7), the 1959 Regulations did not require a property owner to obtain a permit to operate a race track or uses accessory thereto. All such uses were permitted as of right in the RE District.

- 16. Although Section 16.3 of the 1959 Regulations required a property owner to obtain a permit for constructing, enlarging or moving a building, the 1959 Regulations did not require a property owner to obtain a permit for existing, permitted buildings or uses. For example, while the private preparatory schools in Town were required to get permits for new buildings or uses, they were not required to obtain permits for existing buildings or existing uses such as running a boarding school. As such, in 1959, the owner of the LRP Property did not need to obtain any kind of permit to operate the Track under the 1959 Regulations as a permitted use.
- 17. Pursuant to Section 411.21.1 of the 1959 Regulations, races could be conducted "during such hours as are permitted by statute."
- 18. In 1935, the Connecticut General Assembly adopted Connecticut General Statutes ("CGS") § 898c, the precursor to CGS § 14-164a, governing race track operations.
- 19. As of 1959, § 898c was codified as CGS § 29-143 and provided that races, contests and demonstrations of speed or skill could "be conducted at any reasonable hour of any week day or after the hour of two-o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the

provisions of any city, borough or town ordinances." Therefore in 1959, LRP could hold races, contests and demonstrations any day of the week and after 2:00 on Sundays.

- 20. As explained in the "Development Plan for Salisbury" adopted on August 3, 1958, "[t]he Lime Rock Race Track is an established recreation business of major proportions" which "legitimately exists as an enterprise operated by citizens of the town." It is located in an area "not likely to be developed solely or wholly for residence, because of its value for business and industry as a large flat area on gravelly soil." The Plan recognized that "[a]s has been stated many times, many of the nuisance factors objected to by local residents are not within the jurisdiction of the Commission and can best be dealt with by other legal procedures."
- 21. In 1958, a nuisance lawsuit was brought against the-then Property owner by neighbors of the Track. Neither the Town of Salisbury nor the Commission was a party to the lawsuit.
- 22. On May 12, 1959, a Stipulation of Judgment (the "1959 Stipulation") was entered in the above-referenced lawsuit which imposed restrictions on numerous aspects

- of the day-to-day operation of the Track, including but not limited to hours of racing, as a means to abate noise.
- 23. The Stipulation was amended on various occasions, including most recently on January 14, 1988, in response to requests by LRP/prior owners to address changing circumstances.
- 24. Since 1959, there have been various amendments to the sections of the zoning regulations pertaining to the RE District and race track operations. The zoning regulations in effect as of the date the Commission proposed the amendments that are at issue in this appeal are sometimes herein referred to as the "Zoning Regulations."
- 25. Section 221.2.a of the Zoning Regulations provides that "[n]o races shall be conducted on any such track except during such hours as permitted by Court Order dated 5/12/59 and subsequent related Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." As such, the Zoning Regulations incorporate the 1959 Stipulation and "subsequent related Court Orders on file", if any, (referred to in the Zoning Regulations as the "Court Orders") only as they pertain to hours of races.

- 26. The Connecticut General Assembly has permitted racing, contests and demonstrations of speed or skill seven days a week since the adoption of § 898c in 1935. The current version of CGS § 14-164a allows such activities to "be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday" except that the "legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." (Emphasis added).
- On August 24, 2015 and September 3, 2015, the Commission published notice of the public hearing to be held on the amendments at issue in this appeal in the Waterbury Republican American and the LV Journal (Lakeville Journal), respectively (the "Notice"). The Notice stated that "Copies of the proposed amendments are on file in the office of the Town Clerk Salisbury Town Hall and in the Planning & Zoning Office." The amendments on file are herein referred to as the "Noticed Amendments."
- 28. The Noticed Amendments, *inter alia*, incorporated into the Zoning Regulations <u>all</u> of the terms and conditions of the most recent Stipulation, including but not

- limited to provisions addressing mufflered vs. unmufflered activity, loudspeakers, non-racing motorcycle activities, camping, use of accessways abutting property "located at 52 White Hollow Road", signage and lighting.
- 29. The Noticed Amendments also list a "Track for Racing Motor Vehicles" as a use in Table 205.2 "Table of Uses", and list "Activities incidental/accessory to Lime Rock Park" in Table 205.3 "Table of Accessory Uses."
- 30. The Noticed Amendments do not eliminate race tracks as a permitted use within the RE District and the Notice provided no warning that the Commission might consider doing so.
- 31. The Commission held a public hearing on the Noticed Amendments on September 8, 2015, which was continued to and closed on October 19, 2015.
 During the public hearing LRP advised the Commission that days and hours of racing were governed by State law, specifically, CGS § 14-164a.
- 32. On November 16, 2015, the Commission began deliberations on the Noticed Amendments. At the start of the meeting, the Chairman circulated a modified version of the Noticed Amendments (the "Modification", and as modified, the Noticed Amendments are referred to as the "Modified Amendments").

- The Modified Amendments include limits on days and hours of racing and race car activities, contrary to CGS § 14-164a.
- 34. In recognition of the fact that an attempt to control the days and hours of racing and race car activities may exceed its statutory authority, the Commission included a new section (221.6) in the Modification which operates as an "in terrorem" clause, to punish LRP if it successfully challenges any provision of the Modified Amendments. Specifically, section 221.6 provides that:

If any portion of this section 221.1 shall be found by a court of competent jurisdiction to be illegal, it is the intent of this Commission no part of Section 221.1 shall remain valid, including the amended table of uses adopted simultaneously herewith providing that a track for racing of motor vehicles shall be allowed by special permit in the RE District; it being the intent of the Commission that, if it is found that the Commission lacks authority to regulate any aspect of Race Track use as set forth herein, then a track for Racing of Motor Vehicles shall be found to not be permitted in the RE District, and any race track use in existence at the time of the adoption of these regulations shall have such rights as may exists as a nonconforming use under these regulations and Connecticut law.

35. The Resolution of Approval (as drafted by the Commission's attorney) explained that "[Section 221.6] has been inserted in light of claims that parts of the existing regulations and proposed amendments may be illegal."

- 36. In short, the Commission inserted the "in terrorem" clause so that if LRP successfully proved the Commission had exceeded its authority and the Modified Amendments were illegal, the regulations would not revert to those existing before adoption of the Modified Amendments, but instead, LRP would be punished through the imposition of a more restrictive zoning classification that of a preexisting nonconforming use. As such, the insertion of the in terrorem provision is intended to punish LRP if it chooses to exercise its right to use the court system to contest the Modified Amendments.
- 37. Although by law, nonconforming uses must be allowed to continue to operate, they are limited in their rights to expand or change, and the goal of zoning is to ultimately eliminate them.
- Amendments in a way that could result in the Track becoming a preexisting nonconforming use as opposed to a permitted use, (thus restricting LRP's ability to expand and/or change operations as necessary to remain competitive and viable), LRP would have offered evidence at the public hearing of the many and significant economic benefits the Track brings to the Town of Salisbury. For example, in November 2015, LRP responded to a request by the Salisbury

Economic Development Commission for a detailed economic report, which report demonstrated the Track's economic value to the Town of Salisbury. LRP would have submitted this report, or a similar report, at the public hearing had it been given notice of Section 221.6.

- 39. Had the public known that the Modified Amendments would potentially eliminate race tracks as a permitted use (thus restricting LRP's ability to expand and/or change operations as necessary to remain viable), additional individuals and organizations may have attended the public hearing. For instance, people whose businesses rely heavily on the Track, as well as people representing groups whose purpose is to advance economic development and business in Salisbury (such as the Economic Development Commission or Chamber of Commerce) may have attended.
- 40. Thus, because the Notice and the amendments on file with the Town of Salisbury up to the time that the public hearing closed did not include the Modifications, neither LRP nor other members of the public could prepare adequately for the public hearing. In fact, the Chairman specifically stated at the opening of the public hearing that the hearing was not a venue to say all the good the Track does for the town.

- 41. The Chairman further stated at the opening of the public hearing that the hearing was not the forum for complaints about the Track. Despite this statement, complaints were allowed, but LRP was not allowed to rebut such complaints.
- 42. The Notice also failed to adequately advise members of the public that they might have an interest in attending the public hearing, and failed to fairly and sufficiently apprise those who might be affected of the nature and character of the action proposed, so that such persons or organizations could properly prepare to participate in the hearing.
- 43. The Modified Amendments are contrary to the comprehensive plan because while the plan (as found in the scheme of zoning) allows race tracks as a permitted use, the Modified Amendments seek to limit the operation of a race track to such an extent that the use will no longer be viable.
- 44. The Modified Amendments are contrary to the Town of Salisbury 2012 Plan of Conservation and Development because they will destroy the viability of the Track, which in turn will harm numerous small businesses in Salisbury that rely heavily on Track patrons. This is directly contrary to the Plan's stated intent to modify zoning to promote "additional small businesses in Lime Rock village center (restaurants, general store, boutiques, offices, etc.)." Furthermore, damage

- to the Track's viability is contrary to the Plan's goal of "foster[ing] ... employment opportunities that attract full-time residents to Salisbury."
- District regulations to not only file an application to amend the Regulations, but also to apply for a special permit. Requiring parties to apply for a special permit as a condition of being allowed to petition the Commission to amend the Zoning Regulations is contrary to CGS §8-3(c), which governs the amendment of zoning regulations and does not require a special permit application.
- Amendments to compel LRP to choose between filing an application for a special permit to operate the Track in compliance with the Modified Amendments or operating as a pre-existing nonconforming use.
- 47. Based on comments from the Commission, some of the Commissioners may interpret the Modified Amendments to require LRP to obtain a special permit for nearly every event that it holds, which is contrary to how the special permit procedures are applied to other entities in Town.

- 48. On November 16, 2015, the Commission voted to approve the Modified

 Amendments, amending Sections 221.1, Definitions and Tables 205.2 and 205.3

 of the Zoning Regulations.
- 49. Notice of the Commission's decision was published in the Waterbury Republican

 American on November 24, 2015.
- 50. LRP is harmed by the adoption of the Modified Amendments because, *inter alia*, the Commission is attempting to require LRP to obtain a permit to conduct its existing operations when there is no legal basis for doing so; the Commission is limiting racing and race car activities, in violation of State law; the Commission is prohibiting racing and race car activities on Sunday, in violation of State law; and if LRP successfully proves the Modified Amendments are illegal, LRP will be punished.
- 51. The Commission acted illegally, arbitrarily, capriciously and in abuse of its discretion in adopting the Modified Amendments, in one or more of the following ways:
 - a. The provisions limiting days and hours of racing and race car activities are preempted by CGS § 14-164a.

- b. The Commission cannot require a property owner operating as an existing, permitted use to apply for a special permit to continue to operate in the same manner it currently operates.
- c. The Commission exceeded its statutory authority under CGS § 8-3(c) by requiring someone seeking to amend the RE District regulations to apply for a special permit as a precondition.
- d. Notice for the public hearing was insufficient given the significant differences between the Noticed Amendments and the Modified Amendments that were adopted. As a result of the failure to give proper notice of these significant differences, especially section 221.6, LRP and other interested and affected parties were not fairly and sufficiently apprised of the nature and character of the action proposed, so that such persons or organizations could properly prepare to participate in the hearing.
- e. There is no evidence in the Record to support the Modified

 Amendments. Although they purport to address the minutia of race track

 operations, including hours of operation, when mufflers are or are not required,

 accessways, camping, lighting, parking and numerous other details, the record is

 devoid of discussion or facts pertaining to these issues such as problems created

or factual bases showing why the Modified Amendments are necessary or appropriate.

- f. There is no legitimate land use planning basis to support the Modified Amendments. They are simply an effort to incorporate a stipulation in a nuisance lawsuit between private parties into the Zoning Regulations. The Commission failed entirely to consider whether those provisions are necessary or appropriate. Rather, the Commission simply assumed the terms and conditions from a 1959 court decision constitute valid and appropriate land use regulations over fifty years later, despite uncontroverted evidence in the Record that conditions have changed significantly.
- g. The provisions pertaining to mufflered and unmufflered racing and race car activities are illegal attempts to regulate noise.
 - h. The Modified Amendments constitute illegal spot zoning.
- i. The Amendments target a single property owner by attempting to regulate detailed aspects of LRP's business operations to an extent far beyond that of any other business in the Zoning Regulations.

- j. The Modified Amendments seek to regulate a user, rather than a use, as evidenced from references to "Lime Rock Park" and to a particular neighboring property, 52 White Hollow Road, in the Modified Amendments.
- k. The Modified Amendments contravene the requirement of CGS § 8-2(a) that zoning regulations be in conformity with the Comprehensive Plan.
 - 1. Section 221.6 constitutes illegal conditional zoning.
- m. By including section 221.6, the Commission seeks to restrain
 LRP's right to appeal, thereby violating LRP's due process rights.
- 52. Plaintiff is aggrieved as the owner of the land and operator of the Track that are the subject of the Amendments.
- Plaintiff is also aggrieved in that it has a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest such as that of the community as a whole, which interest, as set forth in the preceding paragraphs, will be harmed by enactment of the Modified Amendments.

WHEREFORE, the Plaintiff appeals from said decision of the Defendant Planning and Zoning Commission of the Town of Salisbury and requests:

- 1. That the Court sustain this appeal;
- That the Court declare the Modified Amendments to be illegal and without effect;
 and
- 3. Such other legal and equitable relief as the Court deems proper.

Dated at Waterbury, Connecticut this 4th day of December, 2015.

THE PLAINTIFF, LIME ROCK PARK, LLC

BY:

MMES K!ROBERTSON, JR. 1

FOR: Carmody Torrance Sandak & Hennessey, LLP

50 Leavenworth Street P. O. Box 1110

Waterbury, CT 06721-1110

Juris No. 008512 Its Attorneys

Please enter the appearance of:

James K. Robertson, Jr., Esq.
Carmody Torrance Sandak & Hennessey, LLP
50 Leavenworth Street
Waterbury, CT 06710-1110
Juris No. 008512
in this matter on behalf of the plaintiff.

DOCKET NO. LLI-CV-15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT
OF LITCHFIELD

٧.

PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY

JANUARY 19, 2015 2016

MOTION TO OF LIME ROCK CITIZENS COUNCIL, LLC TO INTERVENE AS PARTY DEFENDANT

Pursuant to Connecticut General Statutes (General Statutes) §§ 52-102, 52-107 and 52-108 and Connecticut Practice Book §§ 9-6, 9-18, 9-19 and 9-22, Lime Rock Citizens Council, LLC ("LRCC") hereby moves to intervene as a party defendant in this action.

This is a zoning appeal filed pursuant to General Statutes § 8-8 in which the plaintiff appeals from the adoption of zoning regulation amendments adopted by the defendant Planning & Zoning Commission of the Town of Salisbury ("PZC"). The zoning amendments pertain to the operation of race tracks and uses accessory to race tracks, within an area classified by the Salisbury zoning regulations as a Rural Enterprise District. The zoning amendments are in large part codifications of existing court judgments that relate to the operation of Lime Rock Park, LLC, a motor sport road racing venue ("Lime Rock Park" or "racetrack").

LRCC, a Connecticut limited liability company comprised of institutional and individual members, was organized in August 2015 for the purpose of preserving the interests of those adversely affected by the activities of the racetrack and to ensure that interests of the racetrack's neighbors, including those previously represented by the Lime Rock Protection Association, Inc., are properly and vigorously protected. The interests of members of LRCC will be adversely impacted if this Court sustains the racetrack's appeal or approves a settlement

between the racetrack and the PZC that compromises rights of LRCC established in previous litigation and/or authorizes racetrack activities detrimental to the interests of LRCC members.

Among the institutional members of LRCC are Trinity Episcopal Church of Lime Rock ("Church") and The Lime Rock Cemetery Improvement Association ("Cemetery"). The Church is located at 484 Lime Rock Turnpike (Route 112), directly across the street from one of the Lime Rock Park entrances. The historic Lime Rock Cemetery is also located on Route 112 opposite the outfield entrance to Lime Rock Park and across Dugway Road from the Church. Both the Church and the Cemetery were plaintiffs in a 1958 injunction action, which found certain activities of the racetrack to be a nuisance and enjoined those activities (providing, among other limitations, a prohibition on Sunday races).

Another institutional member of LRCC is Music Mountain, Inc. Music Mountain is the home of the oldest continuing chamber music festival in the country and an educational organization, which trains young musicians. Located approximately two miles "as the crow flies" and at 1100 feet above the topographic bowl in which the racetrack is located, noise from the racetrack rises and is clearly audible at Music Mountain. In 2015, Music Mountain offered seventeen (17) Sunday chamber music concerts, featuring string quartets from all over the world, and thirteen (13) twilight concerts. Music Mountain's concerts are recorded and broadcast by radio three times weekly during its performance season and ultimately reach a worldwide audience. If the racetrack succeeds in defeating the PZC regulation at issue and leverages that defeat to collaterally attack the existing judgments (which limit track activities, particularly on Sundays), the ensuing racetrack activities will make Sunday recording and broadcasts impossible; will disrupt the Saturday twilight schedule; and put Music Mountain out of the business of recordings and broadcasts after 86 years.

Of the individual members represented by LRCC, some, such as Peter Wolf, own property abutting or within a radius of 100 feet of the racetrack, which would constitute them as statutorily "aggrieved persons" pursuant to General Statutes § 8-8(a)(1), the zoning appeals statute. Over 100 dues-paying members of LRCC own property within two miles of Lime Rock racetrack and can establish that they would be classically aggrieved (because the value and quiet enjoyment of their properties will be directly and adversely affected by noise and traffic generated by racetrack activities and operations at Lime Rock Park) if this Court sustains the racetrack's appeal.

LRCC is a successor organization to the Lime Rock Park Protection Association, Inc., which was a party in the litigation that led to the court judgments mentioned above. Several of LRCC's institutional members were parties to the original litigation and all of its members have relied upon the court judgments, recently codified by the PZC as amendments to the zoning regulations. Rights of LRCC members established in previous litigation involving Lime Rock Protection Association, Inc., the Church and the Cemetery are likely to be jeopardized by any settlement between the racetrack and the PZC without participation of LRCC.

As more fully explained in the Memorandum of Law that accompanies this Motion, LRCC should be allowed to intervene for a number of reasons, including its direct and substantial interest in the matter by virtue of the proximity of the racetrack to the property of many LRCC members and because of the involvement of some present LRCC members and the Lime Rock Park Protection Association, Inc. (to which LRCC is successor) in the original court actions and judgments upon which the zoning regulation amendments are substantially based.

Pursuant to Practice Book § 11-10(1), a separately-filed Memorandum of Law accompanies this Motion to Intervene.

MOVANT

LIME ROCK CITIZENS COUNCIL, LLC

Timothy S. Hollister

Beth Bryan Critton

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Juris No. 057385

Its Attorneys

CERTIFICATION

This is to certify that a copy of the above was or will be immediately mailed or delivered electronically on January 19, 2016 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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Beth Bryan Critton

Commissioner of the Court

ORDER 435704

DOCKET NO: LLICV156013033S

LIME ROCK PARK, LLC V. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI SUPERIOR COURT

JUDICIAL DISTRICT OF LITCHFIELD
AT LITCHFIELD

5/16/2016

ORDER

ORDER REGARDING: 01/19/2016 103.00 MOTION TO INTERVENE

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

The court grants this motion for the following reasons.

The movant, Lime Rock Citizens Council has associational standing to intervene in this case. Under the criteria set forth in Connecticut Association of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 616 (1986), the movant has associational standing. At least three of the movant's members, the Trinity Episcopal Church of Lime Rock (Church), The Lime Rock Cemetery Improvement Association (Cemetery) and Peter Wolf are statutorily aggrieved under Gen Stat. §8-8(a), while other members would be classically aggrieved by increased traffic if the track's appeal were to be successful. Fort Trumbull Conservancy, LLC v. City of New London, 265 Conn. 423, 435 (2003). If even one member of an organization has standing, the organization does. Conn. Coalition for Justice in Education Funding, Inc. v. Rell, 2014 WL 6920879 13, Superior Court, Judicial District of Hartford (Dubay, J.). Second, the movant's raison d'etre is "to protect, promote and develop property rights and interests of residents, business owners and neighbors of the hamlet of Lime Rock...." That purpose is germane to the zoning issues of this matter. Third, neither the claim asserted nor the relief requested requires the participation of individual members, because the prospective relief asserted will generally inure to the benefit of all the movant's members. Fairfield Heights Residents Assn., Inc. v. Fairfield Heights, Inc. 310 Conn. 797, 822-23 (2014).

Moreover, the movant has also demonstrated standing for the purposes of this land use appeal. The movant's members have specific, personal and legal interests distinguishable from the general interest of all the members of the community, and these specific, personal and legal interests may quite possibly be adversely affected by the outcome of this matter. Handsome, Inc. v. Planning and Zoning Commission of Town of Monroe, 317 Conn. 515, 525-27 (2015). At the very least, the traffic impacts of the increased use sought by the track have the potential negatively to affect the movant's members. The movant and the track agree as to the standards for both intervention as of right and for permissive intervention in land use appeals. This ruling incorporates by reference the four element test for intervention as of right, including citations in support thereof, from page 5 of the movant's memorandum of law in support of motion to intervene, #104 and from pages 1-2 of the track's objection to Lime Rock Citizen Council, LLC's motion to intervene, #108. A further gloss on these standards is provided by our Supreme Court in Horton v. Meskill, 187 Conn. 187, 195 when it stated, when commenting on the predecessor to Practice Book §9-18, that intervention as of right will be granted "if the person will either gain or lose by the direct legal effect of the judgment." This ruling also incorporates by reference the standards for permissive intervention, including the citations in support thereof, set forth on page 2 the track's objection to this motion, #108 and on page 5 of the movant's memorandum in support of this motion, #104.

The four elements for intervention as of right are that: (1) the motion to intervene must be timely; (2) the movant must have a direct and substantial interest in the litigation's subject matter; (3) the movant's interest must be impaired if the case were disposed of without the involvement of the movant and (4) the movant's interest must not be represented by an existing party.

LLICV156013033S 5/16/2016

Page 1 of 3

The court finds that the movant did not demonstrate that its interest "must be impaired" if the case were resolved without the involvement of the movant.

Considerations for deciding whether a party may intervene by permission in a land use appeal are the timeliness of the intervention, the interests of the proposed intervenors in the issues, the adequacy of representation of such interests by existing parties, the delay or other prejudice to other parties that may ensue from the intervention and the necessity for of value of the intervention to assist in resolving the issues before the court. Each of these factors militates in favor of granting permissive intervention to the movant.

The movant's motion to intervene was timely. This motion was filed less than one month after the return date.

The movant and its members have significant interests in this lawsuit. As mentioned above, significant traffic impacts could result from an increase in racing days if the track were to emerge successful in this appeal. These impacts would have their most significant effect on abutters, including at least three constituents of the movant, the Church, the Cemetery and Mr. Wolf. "Connecticut courts have routinely granted motions to intervene by persons owning property abutting property that is subject to an appeal seeking judicial approval of a land use...plan." One Hundred Nine North, LLC v. New Milford Planning Commission, 2008 WL 2168994, Superior Court, Judicial District of Danbury (May 6, 2008, Downey, J.). The regulations at issue in this case incorporate the terms of previous injunctions that have regulated, for decades, the operation of the track, and the Church, the Cemetery and predecessors to several of the movant's members were parties to the litigation that spawned these injunctions.

The defendant Planning and Zoning Commission (PZC), although similarly situated to the movant,

The defendant Planning and Zoning Commission (PZC), although similarly situated to the movant, would not adequately represent the interest of the movant. While the interests of the movant and the defendant PZC overlap to the degree that they are on the same side, namely, in opposition to the changes proposed by the track, the court's examination of this issue does not end there. First, the movant's members had significant input into the language of the new regulations and should be allowed equal input if the track and the commission enter into negotiations over possibly amending such language. Second, the PZC has interests in this case that are different from those of the movant. The PZC has interests in the review of the amended regulations as a regulatory tool. The PZC is charged with representing the interests of all the citizens of the municipality. The movant, on the other hand, has more specific interests. The movant's members advocated for the amended regulations because they believed that regulation of the track should be undertaken by means of zoning regulations, rather than injunctions in private lawsuits. As mentioned above, the potential negative impacts on the members of the movant, particularly the abutting members and those who live close to the track, clearly have a more personal effect on the quality of life of the movant's members than they do on the PZC. Our Appellate Court has held that "[t]he burden for establishing inadequate representation of similar interests is minimal," and "doubt should be resolved in favor of intervention." Rosado v. Bridgeport Roman Catholic Diocesan Corp., 60 Conn. App. 134, 149-50 (2000). One court held that inadequate representation was demonstrated when the proposed intervenor was "in a better position to defend its own procedures" than was an existing party. Milford v. Local 1566, 200 Conn. 91, 95 (1986). For these reasons, the defendant PZC would not adequately represent the interests of the movant.

Additionally, there has been no evidence placed before the court that the involvement of the movant in this matter would delay or prejudice the other parties' ability to settle this case. The court has seen no evidence that any settlement talks between the existing parties have begun, much less progressed to such a state of completion that the involvement of the movant would throw a monkey wrench into such discussions. The concern about delay or prejudice has been alternatively described as a concern that the proposed intervenor would "sabotage" a settlement. Fuller, Land Use and Practice §27:21. Judge Fuller, in his treatise, indicates that intervention is especially an issue when the proposed intervenor files to intervene after the existing parties have reached a settlement. Such is not the case here. There is no evidence that the movant would unfairly delay or unduly prejudice the rights of the other parties to resolve this case. Conversely, given the potential personal impacts on the movant's members if the use of the track were to be increased, it would be abundantly unfair to them not to give them a seat at the table in the negotiation of this zoning appeal.

Finally, the presence of the intervenors would likely provide value to the court in attempting to resolve this matter. As the parties are aware, the ultimate issue raised in this administrative appeal is the regulation of the use of the track. This issue is being fought not only in this case, but in several related cases that are decades old and that arise from previous injunctive relief and zoning appeals. Several of the movant's members, or their predecessors in title or interest, have been parties in the other matters.

LLICV156013033S 5/16/2016

Some of these individuals or institutions bring decades worth of experience and insight into the interaction of the track and its neighbors, experience and insight that may well benefit the court in its attempts to resolve both this matter and the ultimate issue defined above. Additionally, one of the major issues that arise from this case and the related cases is the tension between, on one hand, the regulation of the track by means of injunctions and private actions and, on the other hand, the regulation of the track by means of zoning regulations. It may well prove to be very beneficial to the court to hear from the members of the movant as to the manner in which the track should most fairly be regulated. For these reasons, the court finds that the movant should be allowed to intervene on a permissive basis and grants this motion.

435704

Judge: JOHN DAVID MOORE

NO. LLI-CV-15-6013033 S

LIME ROCK PARK, LLC

SUPERIOR COURT

V.

JUDICIAL DISTRICT OF

LITCHFIELD AT LITCHFIELD

PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY

AUGUST 15, 2016

LIST OF DESIGNATED CONTENTS OF RECORD

- Memorandum to Salisbury Planning Commission from Michael W.
 Klemens, Chair, Re Proposed Amendments to Zoning Regulations, dated July 16, 2015
 (with attachments).
- Proposed zoning text amendment, Section 221.1 Track for Racing Motor
 Vehicles, Definition of Motor Vehicle, Proposed change for Tables 205.2 and 205.3.
 - 3. Legal Notice of public hearing.
 - 4. Referral to Northwest Hills Council of Governments.
 - 5. Response of referral from Northwest Hills Council of Governments.
 - 6. Sign-In Sheets from September 8, 2015 Public Hearing.
- 7. Letter from Carmody, Torrance, Sandak & Hennessey LLP dated September 8, 2015.

- 8. Letter from Carmody, Torrance, Sandak & Hennessey LLP dated October 8, 2015.
- 9. Letter from Carmody, Torrance, Sandak & Hennessey LLP dated October 13, 2015.
- 10. Exhibits 1 through 29 received on or before Public Hearing of September 8, 2015 (numbered 10-1 through 10-30).
 - 11. Lime Rock Citizens Council correspondence dated July 19, 2015
 - 12. Lime Rock Citizens Council correspondence dated September 5, 2015.
- 13. Lime Rock Citizens Council Comments for Public Hearing of September 8, 2015.
- 14. Presentation of the Lime Rock Citizens Council LLC to Salisbury PZC dated October 19, 2016.
 - 15. Sign-In Sheets from October 19, 2015 continued Public Hearing.
- 16. Exhibits 31 through 848 received on or before Public Hearing of October 19, 2015 (numbered 16-31 through 16-848).
 - 17. Redlined version of revised Zoning amendments.
 - 18. Draft statement of Reasons for Decision.
 - 19. Approved Statement of Reasons for Decision.
 - 20. Approved Amendments to Zoning Regulations.

- 21. Transcript from Allan Reporting Services for public hearing on September 8, 2015.
- 22. Transcript from Allan Reporting Services for continued public hearing on October 19, 2015.
- Transcript from Allan Reporting Services for meeting of Planning &
 Zoning Commission of November 16, 2015.
 - 24. Minutes of meeting of Planning & Zoning Commission of July 20, 2015
- 25. Minutes of meeting of Planning & Zoning Commission of September 8, 2015.
- 26. Minutes of meeting of Planning & Zoning Commission of October 19, 2015.
- 27. Minutes of meeting of Planning & Zoning Commission of November 16, 2015
 - 28. Legal Notice of Decision
- 29. Zoning Regulations, Town of Salisbury (as existed before adoption of amendment).

SUPPLEMENTAL RECORD (REPEAL OF SEC. 221.6)

30. Memorandum to Planning & Zoning Commission from Charles R. Andres dated February 19, 2016.

- 31. Agenda with Legal Notice for Special Meeting/Public Hearing for March 30, 2016 and Referral Response from Northwest Hills Council of Governments.
- 32. Memorandum to Planning & Zoning Commission from James K. Robertson Jr. dated March 28, 2016.
- 33. Letter to Dr. Michael Klemens and Commission from Timothy S. Hollister dated March 30, 2016.
- 34. Transcript of meeting of Planning and Zoning Commission of March 30, 2016 (filed in Clerk's Office in lieu of minutes).
 - 35. Legal Notice of Decision approving the repeal of Section 221.6.

THE DEFENDANT,
PLANNING & ZONING COMMISSION OF THE
TOWN OF SALISBURY

BY LECLAIRRYAN

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed or delivered electronically on this 15th day of August, 2016 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

٧.

AUGUST 15, 2016

ANSWER OF DEFENDANT PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL. TO DECEMBER 4, 2015 APPEAL OF LIME ROCK PARK, LLC

The defendant, Planning & Zoning Commission of the Town of Salisbury, ("PZC") answers plaintiff's Appeal, dated December 4, 2015, as follows:

- 1. PZC admits Paragraph 1.
- 2. PZC admits Paragraph 2, but adds that the amendments were further modified by the PZC on March 30, 2016 to repeal Section 221.6 and legal notice of decision relating to the repeal of Section 221.6 was duly published.
 - 3. The amendments speak for themselves.
- 4. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 4 and therefore leaves the plaintiff to its proof
- PZC lacks sufficient knowledge or information to answer the allegations of
 Paragraph 5 and therefore leaves the plaintiff to its proof
- 6. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 6 and therefore leaves the plaintiff to its proof.

- 7. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 7 and therefore leaves the plaintiff to its proof
- 8. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 8 and therefore leaves the plaintiff to its proof
- 9. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 9 and therefore leaves the plaintiff to its proof
- 10. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 10 and therefore leaves the plaintiff to its proof
- 11. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 11 and therefore leaves the plaintiff to its proof
- 12. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 12 and therefore leaves the plaintiff to its proof
- 13. PZC lacks sufficient knowledge or information to answer he allegations ofParagraph 13 and therefore leaves the plaintiff to its proof
- 14. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 14 and therefore leaves the plaintiff to its proof
- 15. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 15 and therefore leaves the plaintiff to its proof
- 16. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 16 and therefore leaves the plaintiff to its proof
- 17. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 17 and therefore leaves the plaintiff to its proof

- 18. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 18 and therefore leaves the plaintiff to its proof leaves the plaintiff to its proof
- 19. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 19 and therefore leaves the plaintiff to its proof
- 20. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 20 and therefore leaves the plaintiff to its proof
- 21. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 21 and therefore leaves the plaintiff to its proof
- 22. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 22 and therefore leaves the plaintiff to its proof
- PZC lacks sufficient knowledge or information to answer the allegations ofParagraph 23 and therefore leaves the plaintiff to its proof
- 24. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 24 and therefore leaves the plaintiff to its proof
- 25. PZC admits the first sentence of this paragraph. As to the second sentence, the PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 25 and therefore leaves the plaintiff to its proof.
- 26. PZC lacks sufficient knowledge or information to respond to the first sentence of Paragraph 26 and therefore leaves the plaintiff to its proof. With respect to Conn. Gen. Stat. § 14-164a, the statute speaks for itself.
 - 27. PZC admits Paragraph 27.
- 28. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 28 and therefore leaves the plaintiff to its proof

- 29. PZC admits Paragraph 29.
- 30. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 30 and therefore leaves the plaintiff to its proof
- 31. PZC admits the first sentence of Paragraph 31. As to the second sentence, such sentence concerns a matter of record, which speaks for itself.
 - 32. PZC admits Paragraph 32.
- 33. PZC admits so much of Paragraph 33 as alleges that "[t]he Modified Amendments include limits on days and hours of racing and race car activities." PZC denies the remaining allegations of Paragraph 33.
- 34. PZC denies the first sentence of Paragraph 34 and further clarifies that § 221.6 was subsequently repealed by the Commission and thereby has been deleted from the amendments. The PZC admits that the second sentence is a quotation of § 221.6.
- 35. The Resolution speaks for itself. In any event, § 221.6 was subsequently repealed by the PZC and thereby has been deleted from the amendments.
- 36. PZC denies Paragraph 36. In any event, § 221.6 was subsequently repealed by the PZC and thereby has been deleted from the amendments.
- 37. As to Paragraph 37, as said paragraph contains a claim of law rather than statement of fact, the PZC leaves the plaintiff to its proof.
- 38. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 38 and therefore leaves the plaintiff to its proof.
- 39. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 39 and therefore leaves the plaintiff to its proof.

- 40. PZC denies the first sentence of Paragraph 40. With respect to the second sentence of Paragraph 40, said sentence refers to a matter of record which speaks for itself.
- 41. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 41 and therefore leaves the plaintiff to its proof.
 - 42. PZC denies Paragraph 42.
 - 43. PZC denies Paragraph 43.
 - 44. PZC denies Paragraph 44.
- 45. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 45 and therefore leaves the plaintiff to its proof.
- 46. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 46 and therefore leaves the plaintiff to its proof.
- 47. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 47 and therefore leaves the plaintiff to its proof.
 - 48. PZC admits Paragraph 48.
 - 49. PZC admits Paragraph 49.
 - 50. PZC denies Paragraph 50.
 - 51. PZC denies Paragraph 51 in its entirety.
- 52. PZC lacks sufficient knowledge or information to answer the allegations of Paragraph 52 and therefore leaves the plaintiff to its proof.

53. PZC lacks sufficient knowledge or information to answer the allegations of

Paragraph 53 and therefore leaves the plaintiff to its proof.

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

BY LECLAIRRYAN

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was mailed or delivered electronically on this 15th day of August 2016 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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19037290.1

DOCKET NO. LLI-CV-15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT

.

OF LITCHFIELD

٧.

PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

AUGUST 24, 2016

AMENDED ANSWER OF INTERVENING DEFENDANT LIME ROCK CITIZENS COUNCIL, LLC TO DECEMBER 4, 2015 APPEAL OF LIME ROCK PARK, LLC

The intervening defendant, Lime Rock Citizens Council, LLC, ("LRCC") amends its

Answer dated and filed on August 12, 2016 in response to plaintiff's Appeal, dated December 4,

2015. This Amended Answer is identical to the Answer of August 12, 2016 with regard to

Paragraphs 1 through 51, but adds responses to Paragraphs 52 and 53, as follows:

- 1. LRCC admits Paragraph 1.
- 2. LRCC admits Paragraph 2, but adds that the amendments were further modified by the defendant Planning and Zoning Commission of the Town of Salisbury ("Commission") on March 30, 2016 to repeal Section 221.6 and legal notice of decision relating to the repeal of Section 221.6 was duly published.
 - 3. The amendments speak for themselves.
- 4. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 4 and therefore leaves the plaintiff to its proof.
- 5. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 5 and therefore leaves the plaintiff to its proof.
- 6. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 6 and therefore leaves the plaintiff to its proof.

- 7. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 7 and therefore leaves the plaintiff to its proof.
- 8. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 8 and therefore leaves the plaintiff to its proof.
- 9. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph9 and therefore leaves the plaintiff to its proof.
- 10. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph10 and therefore leaves the plaintiff to its proof.
 - 11. LRCC admits Paragraph 11.
- 12. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 12 and therefore leaves the plaintiff to its proof.
- 13. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 13 and therefore leaves the plaintiff to its proof.
- 14. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 14 and therefore leaves the plaintiff to its proof.
- 15. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph15 and therefore leaves the plaintiff to its proof.
- 16. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 16 and therefore leaves the plaintiff to its proof.
- 17. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph17 and therefore leaves the plaintiff to its proof.
- 18. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph18 and therefore leaves the plaintiff to its proof leaves the plaintiff to its proof.

- 19. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph19 and therefore leaves the plaintiff to its proof.
- 20. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph20 and therefore leaves the plaintiff to its proof.
 - 21. LRCC admits Paragraph 21.
- 22. LRCC admits so much of Paragraph 22 as alleges that "[o]n May 12, 1959, a . . . Judgment . . . was entered in the above-referenced lawsuit which imposed restrictions on numerous aspects of the day-to-day operation of the Track, including but not limited to hours of racing." LRCC denies that the 1959 Judgment was by Stipulation and disagrees with plaintiff's characterization of the court-entered Judgment as the "1959 Stipulation." LRCC denies that the restrictions placed by the court on the track operation were solely "as a means to abate noise."
- 23. LRCC denies so much of Paragraph 23 as describes the court's 1959 judgment as a "Stipulation"; admits so much of Paragraph 23 as alleges that the 1959 judgment "was amended on various occasions, most recently on January 14, 1988." LRCC lacks sufficient knowledge or information to answer the remaining allegations of Paragraph 23 and therefore leaves the plaintiff to its proof regarding said allegations.
- 24. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 24 and therefore leaves the plaintiff to its proof.
- 25. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 25 and therefore leaves the plaintiff to its proof.
- 26. LRCC lacks sufficient knowledge or information to respond to the first sentence of Paragraph 26 and therefore leaves the plaintiff to its proof. With respect to Conn. Gen. Stat. § 14-164a, the statute speaks for itself.

- 27. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph27 and therefore leaves the plaintiff to its proof.
- 28. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 28 and therefore leaves the plaintiff to its proof.
 - 29. LRCC admits Paragraph 29.
- 30. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph30 and therefore leaves the plaintiff to its proof.
- 31. LRCC admits the first sentence of Paragraph 31. LRCC admits the second sentence of Paragraph 31, except for the characterization of LRP's advocacy as "advis[ing]." LRCC denies that, under the facts and circumstances of this matter, "days and hours of racing were [or are] governed by state law, specifically, Conn. Gen. Stat. § 14-164a."
 - 32. LRCC admits Paragraph 32.
- 33. LRCC admits so much of Paragraph 33 as alleges that "[t]he Modified Amendments include limits on days and hours of racing and race car activities." LRCC denies the remaining allegations of Paragraph 33.
- 34. LRCC denies Paragraph 34 and further clarifies that § 221.6 was subsequently repealed by the Commission and thereby has been deleted from the amendments.
- 35. The Resolution speaks for itself. In any event, § 221.6 was subsequently repealed by the Commission and thereby has been deleted from the amendments.
- 36. LRCC denies Paragraph 36. In any event, § 221.6 was subsequently repealed by the Commission and thereby has been deleted from the amendments.
- 37. LRCC denies so much of Paragraph 37 as it attempts to summarize the law relating to nonconforming uses by saying that "nonconforming uses must be allowed to continue to

- operate." LRCC admits so much of Paragraph 37 as alleges that nonconforming uses "are limited in their rights to expand or change, and the goal of zoning is to ultimately eliminate them."
- 38. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 38 and therefore leaves the plaintiff to its proof.
- 39. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 39 and therefore leaves the plaintiff to its proof.
- 40. LRCC denies the first sentence of Paragraph 40. With respect to the second sentence of Paragraph 40, LRCC lacks sufficient knowledge or information to answer and therefore leaves the plaintiff to its proof.
- 41. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph41 and therefore leaves the plaintiff to its proof.
 - 42. LRCC denies Paragraph 42.
 - 43. LRCC denies Paragraph 43.
 - 44. LRCC denies Paragraph 44.
- 45. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 45 and therefore leaves the plaintiff to its proof.
- 46. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 46 and therefore leaves the plaintiff to its proof.
- 47. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph 47 and therefore leaves the plaintiff to its proof.
 - 48. LRCC admits Paragraph 48.
 - 49. LRCC admits Paragraph 49.

- 50. LRCC denies Paragraph 50.
- 51. LRCC denies Paragraph 51 in its entirety.
- 52. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph52 and therefore leaves the plaintiff to its proof.
- 53. LRCC lacks sufficient knowledge or information to answer the allegations of Paragraph53 and therefore leaves the plaintiff to its proof.

INTERVENING DEFENDANT, LIME ROCK CITIZENS COUNCIL, LLC

Beth Bryan Critton

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Hartford, CT 06103

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Juris No. 057385 Its Attorneys

CERTIFICATION

I hereby certify that a copy of the foregoing Amended Answer was electronically delivered, this 24th day of August, 2016, to all counsel of record and that written consent for electronic delivery has been received from counsel.

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Beth Bryan Critton

Commissioner of the Superior Court

ORDER 435704

DOCKET NO: LLICV156013033S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT OF LITCHFIELD AT LITCHFIELD

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI

9/26/2017

ORDER

The following order is entered in the above matter:

ORDER:

In advance of the hearing ordered in #157, the court orders the parties to supplement the record as follows:

(1) for exhibits 16-840 and 16-841, the parties must provide the entirety of the section of the regulations pertaining to the RE district, including, but not limited to, all portions of the section in which subsection 722 in each exhibit is located and all maps and charts pertaining thereto;

(2) for the Town's zoning regulations issued on 5/12/67, 3/11/74, 7/14/75, 8/27/76, 6/22/79, 2/21/80, 2/23/81, 3/11/82 and 7/25/83, the parties must provide the complete section(s) in which the RE zoning district and the use of the race track are discussed, including, but not limited to all related maps and charts pertaining thereto;

(3) in regard to exhibit 16-839, the parties must provide all documents, including, but not limited to applications, testimony and transcripts that pertain to the amendment to the then-existing regulations that gave rise to section 415.1;

(4) in regard to the Town's zoning regulations issued between January 1, 1987 and the present, with the exclusion of those regulations issued on March 18, 2008, and in 2013, the parties must provide the complete section(s) in which the RE zoning district and the use of the race track are discussed, including, but not limited to all related maps and charts pertaining thereto;

(5) if the appellant or its predecessor in interest has ever applied for a special permit in regard to the operation of a race track at the site in question, the parties must provide all documents pertaining to such an application or applications, including, but not limited to, the application(s), evidence taken by the PZC, and the decision or decisions made concerning said application or applications; and

(6) The PZC must identify for the court the date on which exhibits 17 and 18 were first drafted and made available to the appellant.

In regard to items (1)--(5), inclusive, the court contemplates that the PZC will possess or have access to these documents. The PZC shall obtain the documents ordered in (1)--(5) above and forward them to the other two parties for their review and to see whether the other two parties can stipulate to the fact that the documents forwarded are responsive to this order. After that process, these documents may be filed with the court.

The court orders the parties to comply with this order on or before 10/6/17 at 5 p.m.

Judicial Notice (JDNO) was sent regarding this order.

435704

Judge: JOHN DAVID MOORE

LLICV156013033S 9/26/2017

DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL. : OCTOBER 6, 2017

COMPLIANCE WITH COURT ORDER #435704 (DOCKET ENTRY 159.00)

In response to the court's order # 435704 (docket entry 159.00), the undersigned represents that all counsel agree that the documents provided herein are responsive to the Court's request. Counsel for Lime Rock Park, LLC has advised the parties that it intends to file a motion regarding additional materials that it believes are responsive and/or relevant to the Court's Order.

REQUEST (1): For exhibits 16-840 and 16-841, the parties must provide the entirety of the section of the regulations pertaining to the RE district, including, but not limited to, all portions of the section in which subsection 722 in each exhibit is located and all maps and charts pertaining thereto.

Response: With respect to Exhibit 16-840 (2004 Zoning Regulations) and 16-841 (2008 Zoning Regulations), the sections of the regulations pertaining to the RE Zoning District are attached at Tab A (16-840) and Tab (B) (16-841). With respect to the court's request for all maps, the only maps associated with the zoning regulations are the pertinent zoning maps. At Tab C, are copies of the zoning maps from 1959, 1967, 1993, and 2007 (current). These maps show that the dimensions of what is now the RE Zoning District have not been altered since the zone was originally mapped (as RUE-80) in 1959.

REQUEST (2): For the Town's zoning regulations issued on 5/12/67, 3/11/74, 7/14/75, 8/27/76, 6/22/79, 2/21/80, 2/23/81, 3/11/82 and 7/25/83, the parties must provide the complete section(s) in which the RE zoning district and the use of the race track are discussed, including, but not limited to all related maps and charts pertaining thereto.

Response: The Planning & Zoning Commission has retained copies of older zoning booklets that were issued periodically over time; however, the Commission did not issue a new booklet each time the zoning regulations were amended. After a diligent search, the following older zoning regulations have been located, and each tab contains the sections of the regulations addressing the RE Zoning District:

Tab D: Zoning Regulations, Revised May 12, 1967;

Tab E: Zoning Regulations, Revised March 11, 1974, with handwriting indicating revisions on August 22, 1976; June 22, 1979; February 21, 1980; and February 23, 1981; and

Tab F: Zoning Regulations, with final revision date July 25, 1983

REQUEST (3): In regard to exhibit 16-839, the parties must provide all documents, including, but not limited to applications, testimony and transcripts that pertain to the amendment to the then-existing regulations that gave rise to section 415.1.

Response: Exhibit 16-839 consists of excerpts from zoning regulations in effect on July 1, 1985. The Planning & Zoning Commission has limited records with respect to zoning amendments adopted in 1985 and earlier, due in part to a fire at Town Hall occurring on August 5, 1985 as well as the fact that state record retention policies in effect at that time did not require the retention of applications, exhibits, tapes of public hearings for more than a few years. The Town has retained minutes of Planning & Zoning Commission meetings, and some other

historical documents relating to the Lime Rock Race Track (the latter of which have been made available to all parties pursuant to a request from the plaintiff in this case under the Freedom of Information Act).

Attached at Tab G are copies of minutes from the Planning & Zoning Commission concerning amendments taking effect on July 1, 1985. None of the amendments adopted in July 1985, however, appear to address the content codified at Section 415.1 in the 1985 regulations. To date, the parties have been unable to locate the minutes of the Planning & Zoning Commission where the language in Section 415.1 was adopted. Attached at Tab H are the excerpts from minutes of the Planning & Zoning Commission and other historical documents referencing the language in Section 415.1.

REQUEST (4): In regard to the Town's zoning regulations issued between January 1, 1987 and the present, with the exclusion of those regulations issued on March 18, 2008, and in 2013, the parties must provide the complete section(s) in which the RE zoning district and the use of the race track are discussed, including, but not limited to all related maps and charts pertaining thereto.

Response: As noted in the previous response, the Planning & Zoning Commission has retained copies of older zoning booklets that were issued periodically over time; however, the Commission did not issue a new booklet each time the zoning regulations were amended. After a diligent search, the following older zoning regulations have been located, and each tab contains the sections of the regulations addressing the RE Zoning District:

Tab I - Zoning Regulations, with final revision date pf July 1, 1985;

Tab J - Zoning Regulations, with final typed revision date of September 22, 1988 and final handwritten revision of 11/2/1990; and

Tab K - Zoning Regulations, with final typed revision date of January 1, 1994 and final handwritten revision of 5/23/1997.

The remaining regulations are at Exhibits 16-840 (2004 Regulations), 16-841 (2008 Regulations) and Exhibit 29 (2013 Regulations in effect at the time the appeal was taken).

REQUEST (5): If the appellant or its predecessor in interest has ever applied for a special permit in regard to the operation of a race track at the site in question, the parties must provide all documents pertaining to such an application or applications, including, but not limited to, the application(s), evidence taken by the PZC, and the decision or decisions made concerning said application or applications.

Response: Pursuant to Gen. Stat. Sec. 8-3c(b), a special permit is not effective until notice of the special permit has been filed on the land records of the Town where the property is located. Attached at Tab L are copies of special permits obtained by the plaintiff or its predecessor in title with respect to the Track property that have been filed on the Salisbury Land Records. Also attached at Tab L are minutes regarding an approval of a special permit for a restaurant to serve the race track, which approval does not appear to have been recorded on the land records. With respect to applications, the Planning and Zoning Commission has application materials from the 2014 application only, which are included in the materials at Tab L.

REQUEST (6): The PZC must identify for the court the date on which Exhibits 17 and 18 were first drafted and made available to the appellant:

Response: Exhibits 17 and 18 were drafted between the end of the public hearing (October 19, 2015) and the Commission's deliberation session on November 16, 2015. They were made available to the appellant on November 16, 2015.

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

BY LECLAIRRYAN

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Compliance was mailed or delivered electronically on this 6^{th} day of October 2017 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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Charles R. Andres

900547042.1

DOCKET NO. LLI-CV-15-6013033 S : SUPERIOR COURT

LIME ROCK PARK, LLC : J.D. OF LITCHFIELD

VS. : AT LITCHFIELD

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY : OCTOBER 6, 2017

PLAINTIFF, LIME ROCK PARK, LLC'S, MOTION RE: ADDITIONAL DOCUMENTS RESPONSIVE OR RELEVANT TO COURT ORDER #435704 (DOCKET ENTRY 159.0)

Plaintiff, Lime Rock Park, LLC ("LRP") has reviewed the documents gathered by counsel for the Planning and Zoning Commission ("Commission") (the proposed "Compliance"). While LRP agrees that the aforesaid documents are responsive to the Court's Order, LRP believes that several additional documents should be provided as responsive and/or relevant to the Order.

LRP recognizes that the Court has not yet advised the parties re: the specific topics on which it intends to seek additional argument. That said, it appears the Court is interested in the zoning regulations for the RE zone, as they existed over the years. (See requests re: Regulations from 1967, 1974, 1975, etc. in Requests #1 and 2 of the Order.) As such, LRP asked the other parties if they would agree to include the 1959 Zoning Regulations. As the Court is aware, the 1959 Regulations were the <u>first</u> zoning regulations adopted by the Commission. Counsel for the Commission stated that while it objected to including a copy of the entire 1959 Regulations, it did not object to including the pages from the 1959 Regulations regarding the RE Zone. Counsel for the Citizens Council objected to the 1959 Regulations being included in the Compliance.

LRP attaches as Exhibit A the pages from the 1959 Regulations that relate to the RE zone. LRP understands that the aforesaid pages are already part of the Record on appeal. (See

(W2936642)

16-843) However, LRP believes that it is important that the Court have these pages readily available when it reviews the RE sections of the subsequent versions of the regulations and therefore asks that they be included as part of the Compliance.¹

The Court also inquired regarding whether LRP or its predecessor in interest ever applied for a special permit in regard to the operation of a race track on the site, and asked for all documents pertaining to same. (See Request # 5 of the Order.) LRP asked the Commission and Council whether they would agree to include in the joint Compliance certain documents related to the Council's 2016 request to the Commission that it require LRP to submit a special permit application. LRP believes that although the referenced documents do not arise from a permit application filed by LRP or its predecessor, they are clearly relevant to the Court's inquiry redocuments related to a special permit for operation of a race track on site. Indeed, LRP was concerned that this issue might be raised during this appeal and therefore included an extensive footnote re: same in its September 15, 2016 brief. See page 24, fn24. (A copy of the referenced footnote is set forth below.²) Both the Commission and the Council objected to including the aforesaid documents in the Compliance.

¹ As noted above, the Commission does not object to these pages being part of the Compliance. The Council objected to the inclusion of the entire set of 1959 Regulations and presumably would object to these pages from those Regulations being part of the Compliance.

² From LRP's September 15, 2016 brief:

[&]quot;LRP's complaint also raises claims that the Amendments are improper because commissioners might interpret them to require LRP to obtain a special permit to continue existing, permitted operations and to obtain separate special permits for nearly every event it holds, contrary to how special permit procedures are applied to other entities in town. See Complaint paras. 46, 47, 50 and 51.b. This concern was based on various commissioners' comments throughout the proceedings on the Amendments. Due to the following events, which occurred after the complaint was filed, LRP is not addressing these issues at this time. On February 25, 2016 (after LRP filed its Complaint), Attorney Hollister, on behalf of his client the Intervenor, confirmed the legitimacy of LRP's concerns by urging this interpretation upon the Commission. In particular, he submitted a letter asking the Commission to, inter alia "establish a deadline by which the Track must submit a special permit and site plan application." After a public hearing, the Commission declined to grant the requested relief, determining instead that "we [the Commission] will not require Lime Rock Park to apply for a special permit for track activities at this time." April 18, 2016 Commission meeting minutes at p. 3. In light of this determination, LRP does not address the claims in those paragraphs at this time. Nevertheless, should the Commission, the Intervenor or the Court raise them in this appeal, or

LRP attaches the aforesaid documents as Exhibit B. LRP understands that the Court may decide that it will not review the attached documents in light of the objections of the Commission and Council, but wanted to insure that they were part of the Record and available to the Court if necessary.

Therefore Claimant moves that the documents attached as Exhibits A and B be deemed part of the Compliance or otherwise made part of the Record on appeal.

> THE PLAINTIFF, LIME ROCK PARK, LLC

BY:

MAUREEN DANEHY COX

FOR: Carmody Torrance Sandak & Hennessey, LLP

50 Leavenworth Street

P. O. Box 1110

Waterbury, CT 06721-1110

Juris No. 008512 Its Attorneys

ORDER

The foregoing motion, having been considered by the Court, is hereby GRANTED / DENIED.

By the Court

should they come before the Commission at a later date, LRP reserves all its rights to respond appropriately at that time. (Although this appeal Record does not include these proceedings, should the Intervenor or the Commission dispute this description of the issues or outcomes, or should the Court so request, LRP will gladly supplement the record as necessary.)"

{W2936642}

CERTIFICATION

This is to certify that a copy of the foregoing has been sent, via email and U.S. mail, postage prepaid, on the above date to:

Charles R. Andres, Esq. LeClair Ryan 545 Long Wharf Drive, 9th Floor New Haven, CT 06511 <u>charles andres@leclairryan.com</u>

Timothy S. Hollister, Esq. Beth Bryan Critton, Esq. Shipman & Goodwin LLP One Constitution Plaza Hartford, CT 06103 thollister@goodwin.com bcritton@goodwin.com

Maureen Danehy Cox

DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

٧.

PLANNING & ZONING COMMISSION :
OF THE TOWN OF SALISBURY, ET AL. : MARCH 12, 2018

MOTION TO INTRODUCE EVIDENCE IN ADDITION TO CONTENTS OF THE RECORD

Pursuant to Gen. Stat. § 8-8(k), the Defendant, Town of Salisbury Planning and Zoning Commission, seeks to introduce evidence in addition to the contents of the record on the ground the evidence is necessary for the equitable disposition of the appeal.

The evidence consists of:

- 1. An affidavit and email exchange between undersigned counsel and Richard A. Piroli, Director, Planning & Standards Division, Bureau of Air Management, Connecticut Department of Energy and Environmental Protection (DEEP) addressing whether DEEP believes that Salisbury Zoning Regulations at issue in this appeal must be reviewed by it under its statutory duties to review noise ordinances under Gen. Stat. § 22a-73. See Exhibit A attached hereto.
- Copies of the Noise Ordinances adopted by the City of Hartford and City of
 Waterbury, portions of which were referenced in the Lime Rock's Reply to the
 Commission's Opposition to the Plaintiff's Motion to Reargue dated March 8, 2018
 (docket 178.00) See Exhibit B attached hereto.

As to the first item, DEEP's opinion would be of benefit to the Court in reviewing Lime Rock's claim in its Motion to Reargue that the DEEP must approve and review the Salisbury Zoning Regulations under its duty to review noise ordinances for consistency with state law under Gen. Stat. § 22a-73. The DEEP opinion would be of assistance because it represents the opinion of the administrative agency charged with the enforcement of Gen. Stat. § 22a-73 as it relates to the specific zoning regulation at issue in this appeal. "Although the construction and interpretation of a statute is a question of law for the courts to decide ... it is a well established practice of this court to accord great deference to the construction given [a] statute by the agency charged with its enforcement." Starr v. Commissioner of Environmental Protection, 226 Conn. 358, 372, (1993). Accordingly, the exchange at Exhibit A would assist the court in evaluating Lime Rock's claims.

Moreover, the motion is timely under the circumstances of this case. In the proceedings before the Commission, Lime Rock argued that the Commission had *no* authority to regulate noise, and noise could be regulated at the local level only by a municipal ordinance adopted by the legislative body or the Torrington Health District. See RR 7, letter from James Robertson of September 8, 2015, p. 2 ("the proposed change is an illegal noise regulation that the Zoning Commission lacks the authority to adopt since noise regulations may only be adopted by Town ordinance, the Torrington Health District or Department of Energy and Environmental Protection. ... Salisbury does not have a noise ordinance and this Commission does not have authority to pass noise regulations."). Lime Rock repeated this argument in its Brief, see Lime Rock Brief dated September 15, 2016, p. 16 ("The amendments are not an 'ordinance' enacted by the Town's legislative body..."). Not until Lime Rock's Supplemental Brief dated

September 11, 2017 – well after the zoning proceedings were closed and when briefing was closed – did Lime Rock suggest that the zoning regulations must be approved by DEEP.

Given the fact that Lime Rock's argument was never made to the Commission when the proceedings were open and that this specific argument was made only as briefing was closed, the Commission believes this request has been timely made. It would be unfair to the Commission if it were found to have erred based on claims never made to it, and that it had no chance to address until well after the Commission rendered its decision.

The motion is also timely because the DEEP did not have all the relevant information to render its opinion until after the Court rendered its Decision in this case, which was not until January 31, 2018. Indeed, in its Reply Memorandum dated March 8, 2018, Lime Rock criticized the Commission for failing to inform DEEP of the Court's Decision. In response, counsel has forwarded the Court's opinion to DEEP staff so that it would have the benefit of the Court's opinion before ruling specifically on whether it needed to review these zoning regulations.

As to the municipal ordinances referred to in the second item, the Commission seeks to introduce these ordinances because Lime Rock's Reply Memorandum dated March 8, 2018 quoted from these regulations, but failed to attach the ordinances to its memorandum. If Lime Rock contends, as it seems to, that these municipal noise ordinances are similar or analogous to the Salisbury Zoning Regulations at issue in this appeal, then the Court should have the benefit of the full text of these ordinances.

Accordingly, for the forgoing reasons, the Commission respectfully requests that the Court grant this motion allow the record to be supplemented with the items set forth at Exhibit A.

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

BY LECLAIRRYAN

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Introduce Evidence in Addition to Contents of the Record was mailed or delivered electronically on this 12th day of March 2018 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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Charles R. Andres

904085642.1

ORDER 435704

DOCKET NO: LLICV156013033S

LIME ROCK PARK, LLC V. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI SUPERIOR COURT

JUDICIAL DISTRICT OF LITCHFIELD AT TORRINGTON

3/20/2018

ORDER

ORDER REGARDING: 03/13/2018 180.00 MOTION FOR PERMISSION TO SUPPLEMENT THE RECORD IN ADMINISTRATIVE APPEAL

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

This motion is denied for the reasons set forth on the record on 3/19/18 and for the following additional reasons.

The movant asks the court to take additional evidence at an extremely late hour: approximately six months since the time of the last hearing on this appeal, and almost two months after judgment, on it pending motion for reconsideration. In discussing whether a trial court, in an administrative appeal, should take evidence supplementing the evidence taken in front of the administrative body, our Supreme Court has held that, "The trial court has discretion on whether to take additional evidence, but should ordinarily allow it only when the record is insufficient or when there is an extraordinary reason for it, and before allowing additional evidence the court should (1) determine that the additional evidence is material and (2) that there was a good reason for the failure to present the evidence in the original proceeding. R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 32.8, pp. 207–208." Parslow v. Zoning Board of Appeals, 110 Conn. App. 349, 356,954 A. 2d 275 (2008). Moreover, a motion to reargue is not to be used to have a second bite at the apple, which concept includes the presentation of additional evidence which could have been presented at trial. Opoku v. Grant, 63 Conn. App. 686, 693, 778 A.2d. 981.

In this motion, the movant Commission wants the court to admit, at this extremely late stage of the proceeding, two items of evidence. The first is an email exchange between its counsel and a purported employee of DEEP as to whether DEEP would have required zoning regulations to have been approved by the Commissioner of DEEP. The movant presented no good reason for which this information was not presented earlier. The email exchange is not properly authenticated, and constitutes hearsay. Prior to admitting this email exchange, the court would have had to have taken evidence from counsel for the movant on a substantive issue, which would have led to his disqualification under Rules of Professional Conduct 3.7. For all of these reasons, the court denies the motion to supplement the record at this late date with this evidence.

The second item of evidence comprised two zoning enactments of other towns. There was no showing that these enactments were material to the court's consideration of the zoning amendments at issue in this case. Therefore, the court denies the motion to supplement the record with this evidence as well.

Judge: JOHN DAVID MOORE

ORDER 435704

DOCKET NO: LLICV156013033S

LIME ROCK PARK, LLC V. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI SUPERIOR COURT

JUDICIAL DISTRICT OF LITCHFIELD AT TORRINGTON

4/10/2018

ORDER

The following order is entered in the above matter:

ORDER:

Reference is made to the defendant Planning and Zoning Commission's filing #161, attachment E thereto, p. 146/286. The court orders the defendant Planning and Zoning to undertake a diligent search of its records on or before 4/25/18 at 5:00 p.m. to see if the referenced minutes of 1/13/75 or 1/27/75 are available, as well as any minutes of the Planning and Zoning Commission from that date through the end of 1977, inclusive. If any such minutes are available, the defendant Planning and Zoning Commission shall share copies of them with opposing counsel and file them on the court system on or before 5:00 p.m. on 4/25/18.

Judicial Notice (JDNO) was sent regarding this order.

435704

Judge: JOHN DAVID MOORE

DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

v.

PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL. : APRIL 18, 2018

COMPLIANCE WITH COURT ORDER #435704 (DOCKET ENTRY 181.00)

In compliance with the court's order #435704 (docket entry 181.00), the undersigned represents that the staff of defendant Planning and Zoning Commission has made copies of minutes of the meetings of the Commission's meeting from 1/13/1975 through the end of 1977, and that the undersigned has provided copies of those minutes to counsel of record. A copy of said minutes are attached hereto.

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

BY LECLAIRRYAN, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Compliance with Court Order was mailed or delivered electronically on this 18th day of April 2018 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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ORDER 435704

DOCKET NO: LLICV156013033S

LIME ROCK PARK, LLC V. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI SUPERIOR COURT

JUDICIAL DISTRICT OF LITCHFIELD AT TORRINGTON

4/24/2018

ORDER

The following order is entered in the above matter:

ORDER:

The court has reviewed filing #182. The court is still seeking, as it was in order #159, any relevant information about when and how section 415.1 of the regulations was amended. The court has reviewed an original typed and bound version of the 3/11/74 zoning regulations, found in one of the court files that led to the 1979 camping and parking stipulation. In that version, 415.1 still provided that racing could take place during hours permitted by Statute. The next set of amendments was enacted on August 27, 1976, per attachment E of filing #161. The court has found the notice of the August 27, 1976 amendment both tucked into the original typed and bound version of the 1974 regulations and on numbered page 934 of filing #182. The August 27, 1976 amendments do not revise regulation 415.1.

The court reasonably infers that the revision to 415.1 occurred in one of the subsequent revisions to the zoning regulations handwritten onto the 1974 version of the zoning regulations.

The court orders the defendant Commission to search its records for its minutes in the six months preceding, and the one month after, each of the next three rounds of amendments, namely those occurring on 6/22/79, 2/21/80 and 2/23/81 and both to provide these minutes to opposing and file them in the court file on or before 5:00 p.m. on 5/4/18.

The court also orders the defendant Commission to search its records from March 11, 1974 through and including February 10, 1975 for the 9 page Lime Rock Protection Association's letter referred to in Attachment H of filing #161 and for any minutes maintained of the Commission's activities during that time period, including, but not limited to those that pertain to an amendment of section 415.1 that may have been proposed and/or adopted during that time period. Any such documents shall be shared with opposing counsel and filed with the court on or before 5/4/18 at 5:00 p.m.

Judicial Notice (JDNO) was sent regarding this order.

435704

Judge: JOHN DAVID MOORE

LLICV156013033S 4/24/2018

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DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

٧.

MAY 3, 2018

COMPLIANCE WITH COURT ORDER #435704 (DOCKET ENTRY 183.00)

In accordance with the court's order #435704 (docket Entry 183.00), the undersigned represents that staff of the Defendant Planning and Zoning Commission has searched its records for its minutes in the six months preceding, and the one month after, amendments adopted on 6/22/79, 2/21/80 and 2/23/81 and has attached copies of these minutes hereto at Exhibit A.

The undersigned has also requested staff to search its records from March 11, 1974 through and including February 10, 1975 for the 9-page Lime Rock Protection Association's letter referred to in Attachment H of filing #161 and for any minutes maintained of the Commission's activities during that time period. The undersigned has attached at Exhibit B copies of the minutes of the Planning & Zoning Commission from March 11, 1974 through February 10. 1975. After diligent search, however, staff has been unable to locate the 9-page letter from the Lime Rock Association referred to at Attachment H of filing #161 (i.e., minutes of 2/10/1975). The undersigned has requested counsel for Lime Rock Park LLC and the Lime Rock Citizens Council, LLC to ask their clients if their clients can locate this 9-page letter, but counsel have informed the undersigned that their clients have not been able to locate this letter.

The undersigned understands that the court is seeking information as to when and how the former Section 415.1 was amended to provide that racing shall be allowed during hours permitted "by court order dated 5/12/59" instead of "by statute". As the undersigned indicated in its Notice of Compliance dated 10/05/2017 (filing 161.00):

Exhibit 16-839 consists of excerpts from zoning regulations in effect on July 1, 1985. The Planning & Zoning Commission has limited records with respect to zoning amendments adopted in 1985 and earlier, due in part to a fire at Town Hall occurring on August 5, 1985 as well as the fact that state record retention policies in effect at that time did not require the retention of applications, exhibits, tapes of public hearings for more than a few years. The Town has retained minutes of Planning & Zoning Commission meetings, and some other historical documents relating to the Lime Rock Race Track (the latter of which have been made available to all parties pursuant to a request from the plaintiff in this case under the Freedom of Information Act).

Attached at Tab G are copies of minutes from the Planning & Zoning Commission concerning amendments taking effect on July 1, 1985. None of the amendments adopted in July 1985, however, appear to address the content codified at Section 415.1 in the 1985 regulations. To date, the parties have been unable to locate the minutes of the Planning & Zoning Commission where the language in Section 415.1 was adopted. Attached at Tab H are the excerpts from minutes of the Planning & Zoning Commission and other historical documents referencing the language in Section 415.1.

Unfortunately, after a diligent search of the minutes from 1966 through 1985, the Planning & Zoning Commission remains unable to identify the specific date when Section 415.1 (as set forth in the 1985 regulations) was amended. As the court has noted, there is a sentence in the minutes from 2/10/1975 suggesting that the Commission either had adopted, or was contemplating adopting, an amendment to Section 415.1 stating that racing times would correspond to times allowed by the injunction. ("Wilson made the point that P. & Z. cannot stop racing at the track but by Regulation 415.1 P.& Z. can enforce injunction imposed racing times.") But the Commission has been unable to identify any minutes reflecting when Section 415.1 was amended. The undersigned concludes, based on the copies of the prior zoning

booklets attached at Tabs D, E and F of Filing 161.00, that the regulation was amended at some point between 1974 and 1983. Section 415.1, as amended, was referenced in a Letter from the Lime Rock Protection Committee to the Planning and Zoning Commission dated March 2, 1987 (at page 2), a copy of which is attached hereto at Exhibit C – a further indication that the amended version of Section 415.1 was in effect by 1987. The Commission further notes that in 2013, as part of a comprehensive revision of the regulations, this regulation was amended to add the language "and subsequent related Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office."

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

BY LECLAIRRYAN, PLLC

Bv:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Compliance with Court Order #435704

(Docket Entry 183.00) was mailed or delivered electronically on this 3rd day of May 2018 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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DOCKET NO. LLI-CV-15-6013033 S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT LITCHFIELD

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

SEPTEMBER 15, 2016

BRIEF OF THE PLAINTIFF LIME ROCK PARK, LLC

I. STATEMENT OF THE CASE

This case is about a municipal planning and zoning commission that adopted zoning amendments that violate state law regarding racing activities and noise regulation and fail to further any legitimate land use goal. These improper amendments violate the rights of the one entity they regulate – the plaintiff, Lime Rock Park, LLC ("LRP").

LRP has the statutory right to hold races every day of the week, including Sunday:

No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

Connecticut General Statutes ("CGS") § 14-164a (emphasis added). Despite this clear statutory language, the defendant Town of Salisbury Planning and Zoning Commission (the "Commission") amended its zoning regulations in ways that purport to limit the days and hours that racing and exhibitions are allowed, in defiance of CGS § 14-164a.

Because the amendments irreconcilably conflict with state law, they are invalid.

A review of the Record reveals how this situation arose. Rather than amending its regulations with the goal of complying with applicable laws, the Commission instead amended

its regulations with the improper goal of simply inserting terms from two decades-old private lawsuits. As the Commission made clear throughout its proceedings, the primary purpose in enacting the amendments was to insert into the municipal land use regulations the terms of 1) a court order arising out of a 1958 private nuisance action to which neither the municipality, nor the commission, nor the plaintiff were parties; and 2) a 1979 judgment in a zoning board of appeals enforcement action to which neither the Commission nor the plaintiff were parties. In indiscriminately adopting the terms of the decades-old order and judgment, the Commission not only violated state law regarding days and hours of racing and noise, but also abdicated its duty to carefully consider relevant and current facts and circumstances when amending its regulations.

In addition, even assuming for the sake of argument that court-imposed terms regarding auto racing — some over 55 years old — remain appropriate today, inserting terms arising out of private lawsuits into public zoning regulations is not a valid goal for amending land use regulations. In focusing on this improper goal, the Commission specifically instructed citizens and parties speaking at the public hearing on the amendments to not discuss facts that might have been relevant to whether such terms are appropriate. Finally, in adopting the terms of the decades-old court order and judgment, the Commission not only violated state law and revised its regulations without proper consideration or factual support, but did so in a way that targets only one business with excessive, detailed controls that will significantly and illegally cripple its operations.

II. FACTUAL BACKGROUND

This appeal is from amendments to the Salisbury Zoning Regulations (the "Regulations") proposed by the Commission on or before July 20, 2015 and adopted on

¹ Various versions of the Regulations are referred to throughout this brief. When a particular version is relevant, reference will be made to its year of adoption, such as the "1959 Regulations" or the "2013 Regulations".

November 16, 2015 (the "Amendments"). <u>See Record</u>, Exhibits 1, 24 and 27. The Amendments pertain to the operation of race tracks and accessory uses within an area classified by the Regulations as a Rural Enterprise ("RE") District. <u>See Record</u>, Exhibit 20.

Plaintiff LRP owns property located at 497 Lime Rock Road, Lakeville, Town of Salisbury (the "Property"), within the RE district. Motor vehicle racing and contests and demonstrations of speed and skill have been conducted at the Property since 1957 – before the enactment of zoning – on a race track known then as the Lime Rock Race Track and now as Lime Rock Park (the "Track")². It is not disputed that in 1957, such activities were conducted on all days of the week, including Sundays. See Record, Exhibit 21 at 76, Exhibit 22 at 31 and Exhibit 10-23. Such operation was consistent with state law which has allowed racing seven days a week since 1935.

The statute governing racing was originally adopted in 1935 as § 898c. CGS § 898c (1930 Cumulative Supplement January Sessions 1931, 1933 and 1935). This statute did not address days or hours of racing. In 1939, the Legislature revised the statute to specify that races could take place any day of the week:

[A]ny race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition ... may be conducted at any reasonable hour of any week day³ or after the hour of two o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.⁴

² In 1957 Track activities included, among other things, automobile shows and exhibitions for auto sales, automotive repair and auto repair pits, lunch counters and stands, camping in all areas of the Property, television, movie and radio production, and lighting and sound equipment.

³ A "week day" included Saturdays, as early case law discussions indicate that a "week day" was any day but Sunday. See e.g., Cadwell v. Connecticut Ry. and Lighting Co., 84 Conn. 450 (1911); Connecticut Spiritualist Camp-Meeting Association v. East Lyme, 54 Conn. 152 (1886).

⁴ CGS § 1-1(n) defines an "ordinance" as "an enactment under the provisions of section 7-157." In turn, CGS § 7-

⁴ CGS § 1-1(n) defines an "ordinance" as "an enactment under the provisions of section 7-157." In turn, CGS § 7-157 states that "ordinances may be enacted by the legislative body of any town" Therefore, regulations enacted by a planning and zoning commission are not "ordinances."

See House Bill No. 580, Engrossed Copy of the Acts of the General Assembly. January Session, 1939 page nos. 53 – 55. The Legislature revised the statute in 1975 to expand permissible racing hours to any time after noon on Sundays:

[A]ny race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition ... may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

See Public Act ("PA") 75-404, 1975 Conn. Pub. Acts page nos. 398-99. The Legislature again revised the statute in 1998, to allow racing before noon on Sunday with municipal legislative body approval:

[A]ny race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition ... may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The commissioner [of Motor Vehicles]⁵, with the approval of the legislative body of the city, borough or town in which the race or exhibition will be held, may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

See PA 98-182, 1998 Conn. Pub. Acts page no. 787. Finally, in 2004, the legislature revised the statute to its current wording, which no longer includes permitting responsibilities for the Commissioner of Motor Vehicles:

[A]ny race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition ... may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held, may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

See PA 04-199, 2004 Conn. Pub. Acts page no. 714-15. (A complete copy of the original statute and the public acts cited are attached as Exhibit A hereto.) In short, since the day

⁵ Prior to the 2004 revision, the Commissioner of Motor Vehicles was responsible for issuing permits for Racing Activities.

it first began operations, the Track has had the statutory right to race every day of the week, including Sundays.

On June 8, 1959, the Commission adopted zoning regulations (the "1959 Regulations") and a zoning map which placed the LRP Property in the RE district. From 1957 to the present, the Track has been the only race track in the RE District or in the Town of Salisbury. The LRP Property was virtually the only parcel in the RE District when it was created in 1959 and it continues to be so today.

The 1959 Regulations allowed race tracks as a permitted, <u>as of right use</u>⁶ within the RE district. <u>See Record</u>, Exhibit 16-843 Sec. 8.1.17. Specifically, they permitted "[a] track for racing motor vehicles, excluding motorcycles, to which admission may be charged, and for automotive education and research in safety and for performance testing of a scientific nature." <u>Id.</u> at Sec. 8.1.17. The 1959 Regulations also permitted uses accessory to a race track, as follows:

Accessory uses may include grandstands, judges' stands, automobile repair pits, rest rooms, lunch counters or stands. Accessory uses may also include use of the premises for automobile shows and exhibitions, for the sale of motor vehicles, automotive parts and accessories and fuels, for manufacturing and automotive repair incident to the other activities herein permitted. Other accessory uses may also include the production of television, motion picture or radio programs and the use of necessary lighting and sound equipment therefor.

Record, Exhibit 16-843 at Sec. 8.1.17.7. The 1959 Regulations further provided that races could be conducted on the track "during such hours as are permitted by statute."

See id. at Sec. 8.1.17.1 (emphasis added). Thus, since the statutes in effect in 1959

⁶ Under the 1959 Regulations, one was not required to apply for or obtain a permit to operate a permitted, as of right use (as opposed to a special permit use). See Record, Exhibit 16-843 (improperly labelled "160-843") and Exhibit 22 at 13-14. Thus, the owner of the Track in 1959 did not need to obtain a permit to operate Track activities allowed under the 1959 Regulations.

⁷ As the statute does not limit the days of the week that Racing Activities can take place, the 1959 regulation reasonably incorporated the statute only as to limits on "hours."

allowed races seven days a week, by incorporating these statutes, the 1959 Regulations also allowed races seven days a week.

Until adoption of the Amendments, only a few, mostly minor, revisions were made to the 1959 provisions. The most significant was a change to the permissible hours of racing. Specifically, although the 1959 Regulations allowed races during hours "permitted by statute," See Record, Exhibit 16-843 at Sec. 8.1.17.1 (1959 Regulations), starting in 1985, races have been allowed only "during such hours as permitted by Court Order dated 5/12/59." See Record, Exhibit 16-839 at Sec. 415.1 (1985 Regulations) and Exhibit 23 at 33. In 2013, the Commission revised this section again to include subsequent court orders, allowing races "during such hours as permitted by Court Order dated 5/12/59 and subsequent related Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." See Record, Exhibit 29 at Sec. 221.2 a (2013 Regulations, 8 emphasis added).

The 1959 Court Order and "subsequent related Court Orders" referenced in the 2013 Regulations were issued in a private nuisance action brought by neighbors of the Track in 1958 against the then-Property owner. Neither the Town of Salisbury, nor the Commission, nor the current Track owner – the plaintiff LRP – were parties. See Record, Exhibit 10-179. The 1959 Court Order addressed not only "hours" of "racing" but also numerous other aspects of Track operation. See id. Thereafter, in response to requests by neighbors and prior owners of the Track to address changing circumstances, the 1959 Court Order was amended by court order and stipulation several times, including most

8 These were the Regulations in effect when the Amendments were adopted.

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⁹ Exhibit 10-17 contains numerous documents, some of which include as attachments the 1959 Court Order and subsequent order and stipulations. For the Court's convenience, those attachments are included as <u>Exhibit B</u> hereto. ¹⁰ The Court order was amended in 1966 (by Stipulation), 1968 (by Order) and in 1988 (by Stipulation). <u>See</u>

recently by stipulation on January 14, 1988 (collectively, as amended, the "Court Order"). See id.

In contrast to earlier amendments which incorporated the Court Order only as to "hours" of "races," the subject Amendments incorporate all of the terms of the Court Order, thus restricting and regulating numerous aspects of day-to-day operations. They prohibit Sunday racing, mandate specific hours and days of operation not only for days of the week generally, but also for specific calendar days, list permissible "rain dates" for track events, dictate requirements for "permissible mufflers", differentiate between mufflered and unmufflered activity, and govern, among other things, loudspeaker operation and non-racing motorcycle activities. See Record, Exhibit 20. As described in Section III.C.3, below, these are the topics that citizens were instructed not to discuss.

The Amendments also incorporate provisions from a judgment¹¹ (the "Judgment") in another lawsuit – a 1979 enforcement action by the Salisbury Zoning Board of Appeals pertaining to camping at the Track. See Record, Exhibit 19 at 1. The terms incorporated almost verbatim into the Amendments from this Judgment¹² address details as to camping locations and nighttime parking and accessway use including prohibitions on use of accessways abutting a specific parcel of property ("52 White Hollow Road"). See Record, Exhibit 20 at Sec. 221.3.

Record, Exhibit 10-17.

The Commission characterized the terms incorporated as being "based on the stipulated judgment dated" September 19,1979 in Lime Rock Foundation, Inc. v. Zoning Board of Appeals of the Town of Salisbury, No. 16,4046 (Judicial District of Litchfield)." See Record, Exhibit 19. In fact, that pleading is entitled "Judgment" although it was based upon a stipulation of the parties. See Record, Exhibit 10-18. The judgment and stipulation

are attached as Exhibit C hereto.

12 The Amendments modify the Judgment language slightly to remove references to specific portions of the LRP Property. Additionally, whereas the Judgment permits "camping by an unlimited number of spectators and participants" (emphasis added) the Amendments refer only to "camping by spectators and participants." See Record, Exhibit 20 at Sec. 221.3 and Exhibit 10-17 (the Judgment is attached as an Exhibit to the 9/4/15 Motion to Modify Stipulation and Judgment and is also included in Exhibit C hereto).

The Amendments initially included a section (Section 221.6) which would have rendered racing a nonconforming use if any party were to prevail in a legal challenge to any section of the Amendments. As such, if LRP were to prove that the Commission acted improperly in adopting the Amendments, LRP would be punished. This "in terrorem clause" was intended to discourage LRP from appealing the wrongful conduct of the Commission. This utterly inappropriate provision was presented to the Commission for the first time at its deliberation session following the close of the public hearing on the Amendments. See Record, Exhibit 23 at 4, 42-44.

On November 16, 2015, the Commission voted to approve the Amendments, including Section 221.6. Notice of the decision was published in the Waterbury Republican American on November 24, 2015. See Record, Exhibit 28. LRP filed its complaint within 15 days thereafter, on December 8, 2015. Among other allegations, the complaint alleged that Section 221.6 was illegal for numerous reasons. See Complaint paras. 50 and 51d, I and m. The Commission subsequently reconsidered the "in terrorem clause" and voted to repeal it. See Record, Exhibit 35. The Lime Rock Citizens Council (the "Intervenor") filed a Motion to Intervene on January 19, 2016 which the Court granted on May 16, 2016.

III. CLAIMS OF LAW

- A. THE PLAINTIFF IS AGGRIEVED BY THE ACTIONS OF THE COMMISSION IN ADOPTING THE AMENDMENTS.
- B. STANDARD OF REVIEW.
- C. THE COMMISSION ACTED ARBITRARILY, CAPRICIOUSLY AND IN ABUSE OF ITS DISCRETION IN ADOPTING THE AMENDMENTS.
- 1. The provisions limiting days and hours of racing and race car activities violate and are preempted by CGS § 14-164a.
- 2. The Amendments are illegal attempts to regulate noise.

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- 3. The Commission improperly incorporated provisions into the Amendments without first considering whether they were appropriate, and evidence in the Record demonstrates that they are not.
- 4. There is no legitimate land use basis to support the Amendments.
- 5. The Commission exceeded its statutory authority under CGS § 8-3(c) by requiring someone seeking to amend the RE District regulations to apply for and obtain a special permit as a precondition.
- 6. The Amendments contravene the requirement of CGS § 8-2(a) that zoning regulations be in conformity with the Comprehensive Plan.
- 7. The Amendments constitute illegal spot zoning, target a single property owner and seek to regulate a user rather than a use.

IV. DISCUSSION AND ARGUMENT

A. THE PLAINTIFF IS AGGRIEVED BY THE ACTIONS OF THE COMMISSION IN ADOPTING THE AMENDMENTS.

Connecticut General Statutes ("C.G.S.") §§ 8-8(b) and 8-9 provide a right of appeal to the Superior Court from the decision of a zoning commission. In order to exercise this statutory right of appeal, a plaintiff must allege and prove aggrievement. McNally v. Zoning Comm'n, 225 Conn. 1, 6 (1993); Smith v. Planning & Zoning Bd., 203 Conn. 317, 321 (1987). A plaintiff may prove aggrievement by showing either statutory or classical aggrievement. Cole v. Planning & Zoning Comm'n, 30 Conn. App. 511, 514 (1993); Zoning Bd. of Appeals v. Planning & Zoning Comm'n, 27 Conn. App. 297, 300-01 (1992). In this appeal, the plaintiff is both statutorily and classically aggrieved. Under CGS § 8-8(1) a plaintiff is statutorily aggrieved if it owns property "that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." The Superior Court may hear evidence as to the plaintiff's property interest ownership, as the Court is "not limited to the record before the [] commission on the issue of aggrievement." Hall v. Planning Comm'n, 181 Conn. 442, 444 (1980). At trial, LRP will introduce evidence to demonstrate that it is (and was on December 8,

2015) the owner of almost all of the land in the RE zone that is the subject of the Amendments and that it owns the only race track in the RE zone and the Town of Salisbury. As LRP's Property is the land involved in the decision of the Commission, it is aggrieved under CGS § 8-8(1).

As to classical aggrievement, it is well established in Connecticut that:

A party has been classically aggrieved if it successfully demonstrates a specific, personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole, and successfully establishes that this specific, personal and legal interest has been specifically and injuriously affected by the decision.

Zoning Bd. of Appeals v. Planning & Zoning Comm'n, 27 Conn. App. 297, 301 (1992) (citations omitted). The plaintiff has a specific, personal and legal interest in the subject matter of the Commission's decision as the owner of the only property affected by the Amendments.

Furthermore, LRP's interests have been specially and injuriously affected by the Commission's adoption of the Amendments because as explained more fully below, the Commission's decision was arbitrary, capricious and in abuse of its discretion. In particular, the Amendments adopt regulatory provisions that violate state law applicable to the operation of the plaintiff's Track, impose strict and detailed operating conditions on the Track without a proper evidentiary basis for doing so, include requirements for amending the zoning regulations that exceed the Commission's statutory authority, and unfairly target the plaintiff's business with regulations more detailed and restrictive than those governing any other business in Salisbury.

B. STANDARD OF REVIEW.

The Connecticut Supreme Court has long recognized that, although the power to zone is vested in local zoning boards, such power is not unlimited. The power to zone, as an imposition

of restrictions on the use of private property, "is subject to its own restrictions in that it never can be exercised in an arbitrary manner." <u>Del Buono v. Board of Zoning Appeals</u>, 143 Conn. 673, 677 (1956).

When a zoning board acts upon a change in the zoning regulations, it is acting in a legislative capacity. Burnham v. Planning & Zoning Comm'n, 189 Conn. 261, 265 (1983). In such cases, it is the function of the court to determine whether the record before the agency supports the decision reached. Calandro v. Zoning Comm'n, 176 Conn. 439, 440 (1979). Where the local zoning board has acted arbitrarily, illegally or in abuse of its discretion, courts must grant relief. Suffield Heights Corp. v. Town Planning Comm'n, 144 Conn. 425, 428 (1957).

In <u>Suffield Heights</u>, the Court, in commenting on the statutory right of an aggrieved party to appeal from an adverse decision of a local zoning authority, stated:

In light of the statute, a court cannot take the view in every case that the discretion exercised by the local zoning authority must not be disturbed, for if it did the right of appeal would be empty.

Id. at 428. The Court concluded that a court "can grant relief upon appeal in those cases where the local authority has acted arbitrarily or illegally and consequently, has abused the discretion entrusted to it." Id. As the Commission acted in just such a manner when it adopted the Amendments, LRP's appeal must be sustained.

- C. THE COMMISSION ACTED ARBITRARILY, CAPRICIOUSLY AND IN ABUSE OF ITS DISCRETION IN ADOPTING THE AMENDMENTS.
 - 1. The provisions limiting days and hours of racing and race car activities violate and are preempted by CGS § 14-164a.

"[A] local ordinance is preempted by a state statute whenever ... the local ordinance irreconcilably conflicts with the statute" <u>Bauer v. Waste Management of Connecticut, Inc.</u>

{W2629686;5}

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234 Conn. 221, 232 (1995) (internal citations and quotations omitted). As discussed below, the Amendments irreconcilably conflict with CGS § 14-164a, and thus, are preempted.

CGS § 14-164a delineates specific parameters within which race track activities, including but not limited to races, can be conducted. It provides:

No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition and shall take place contrary to the provisions of any city, borough or town ordinances.

CGS § 14-164a(a) (emphasis added; operations of motor vehicles in races, contests or demonstrations of speed or skill as a public exhibition are hereinafter referred to as "Racing Activities"). This longstanding statute has undergone only slight variations from its inception, with subsequent iterations expanding permissible hours of Racing Activities including allowing earlier start times on Sundays. See Section II. above. As it currently reads, CGS §14-164a allows Racing Activities any reasonable hour Monday through Saturday and on Sunday afternoons, or, if there is approval from the municipal legislative body, before noon on Sundays as well. Significantly, a planning and zoning commission has no authority to alter permissible hours of Racing Activities. Only the legislative body of a town may do so 14 and even then, it may only expand permissible hours into Sunday mornings. The statute does not authorize any municipal agency to limit the days that Racing Activities may occur.

The Commission acknowledged that racing was governed by statute when it adopted zoning regulations in 1959. As discussed above, the 1959 regulatory section governing race tracks allowed motor vehicle "races" to be conducted "during such hours as are permitted by

¹³ That is, any such race or exhibition with a start time prior to noon on Sunday.

¹⁴ It is beyond dispute that the Commission is not the legislative body of the town.

statute." See Record, Exhibit 16-843 Sec. 8.1.17.1 (emphasis added). In contrast, the Commission ignored this authority when it adopted subsequent versions of the regulations which incorporated "hours" of "races" from the Court Order.

The Commission ignored this statutory constraint again — and to a much greater degree — when it adopted the Amendments and in particular, the provisions it essentially cut and pasted from the Court Order and Judgment. These incorporated terms include extensive illegal restrictions on days and hours of "races". Section 221.1.a (1) prohibits "[a]ll activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas" on Sundays. In contrast, CGS § 14-164a allows all Racing Activities at any reasonable hour on Sundays after noon. Section 22.1.a (2) restricts "activity" with "unmufflered racing car engines" to Tuesday afternoons and ten Fridays and Saturdays. In contrast, CGS § 14-164a(a) allows all Racing Activities any day of the week, not just on Tuesdays or limited Fridays and Saturdays, and does not differentiate between races or Racing Activities with mufflered or unmufflered engines. Despite the clear language of CGS § 14-164a, the Amendments prohibit Sunday racing and limit days of unmufflered racing, in blatant defiance of that law. As the Sunday prohibition and limits on unmufflered racing irreconcilably conflict with CGS §14-164a, they are preempted. See Bauer v. Waste Management of Connecticut, Inc., 234 Conn. 221, 232 (1995) (internal citations and quotations omitted).

The Commission or Intervenor may argue that these limitations were already included in the Regulations because they were incorporated by reference; and in fact, the Amendments state:

¹⁵ Whether the Commission intended section 221.1(a) to apply solely to "races" or to extend to other Racing Activities is unclear. Although the general heading in 221.1 refers to "races," subheadings 221.1 a.(1), (2) and (3) apply to various kinds of racing "activity." (This shift from "races" to "activit[ies]" underscores the cutting and pasting that generated the Amendments as discussed in Section IV.C. 3 below). Regardless of whether the Commission intended the 221.(a) to apply to "races" or to extend to other Racing Activities (thus expanding its subsets beyond the sets to which they apply in violation of basis rules of grammar), the provisions exceed the Commission's authority and violate CGS § 14-164a.

The parameters set forth herein are identical to those set forth in the Amended Stipulation of Judgment ... which parameters were previously incorporated by reference in the zoning regulations.

Record, Exhibit 20 Sec. 221.1.a, fn. 1. Such a claim would be incorrect, however, as prior versions of the Regulations incorporated the Court Order only as it pertained to "hours" of "races." See e.g., Record, Exhibit 23 at 8, Exhibit 29 (2013 Regulations) at Sec. 221.2.a, Exhibit 16-841 (2008 Revision) at Sec. 722.1, Exhibit 16-840 (2004 Revision) at Sec. 722.1 and Exhibit 16-839 (1985 revision) at 415.1. By restating all of the Court Order language as opposed to simply incorporating "hours" of "races", the Amendments clearly do much more than restate provisions already incorporated into the Regulations. In addition, the Stipulation terms related to camping were never incorporated into any version of the Regulations, which prior to the Amendments, did not address camping at all.

2. The Amendments are illegal attempts to regulate noise.

It is clear from the Record that the Amendments are simply the wholesale adoption by the Commission of an injunction from a noise abatement case brought long ago and under different circumstances by some neighbors of the Track. The Commission and its attorney have repeatedly admitted that fact. See Section IV.C.3 below. Although the noise abatement regulations are at times camouflaged as regulated hours of operation, their intent and their effect cannot be disputed. They seek to micro-control, among other things, the time, place and manner of use of mufflered and unmufflered vehicles, when racing can and cannot be held, and when testing and qualifying can be done. All of these restrictions are the noise abatement restrictions imposed in the Court Order. As the Commission has been repeatedly advised by its attorney,

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¹⁶ The Commission or Intervenor may also argue that "hours" included "days". Such an argument is not supported by the Record. In fact, the Court Order included provisions regulating "hours" and provisions regulating "days." See Record, Exhibit 10-17 and Exhibit B hereto. Prior to the Amendments, the Regulations did not. See Record, Exhibit 29, Sec. 221.2.a.

see, e.g., Record Exhibit 10-24 and Exhibit 21 at pp. 84-85¹⁷, and as discussed below, the Commission does not have authority to regulate noise.

Rather, the Legislature, through CGS § 22a-69, has authorized the Commissioner of the Department of Energy and Environmental Protection ("DEEP") to enact regulations governing noise. Those regulations specifically exempt "[n]oise created by the use of property for purposes of conducting speed or endurance events involving motor vehicles ... during the specific period(s) of time within which such use is authorized by the political subdivision or governmental entity having lawful jurisdiction to sanction such use." Regulations of Connecticut State Agencies § 22a-69-1.8(e). In addition, CGS § 14-80(b), which requires mufflers on "motor vehicle(s) operated by an internal combustion engine," specifically exempts motor vehicles that are "operated in a race, contest or demonstration of speed or skill as a public exhibition pursuant to subsection (a) of section 14-164a." Therefore, pursuant to state law, mufflered or unmufflered Racing Activities may take place at any reasonable hour Monday through Saturday and after noon on Sundays. Provisions in the Amendments that differentiate between and limit mufflered vs. unmufflered activities and limit racing, testing, qualifying and other Racing Activities (other than prohibitions on pre-noon Racing Activities) irreconcilably conflict with state law and thus are preempted. Bauer v. Waste Management of Connecticut, Inc., 234 Conn. 221, 232 (1995) (internal citations and quotations omitted).

Furthermore, because the Legislature has evidenced an intent to occupy the entire field of noise regulation, the Commission cannot adopt its own noise regulations except in accordance

¹⁷ For instance, Attorney Andres stated: "They don't have authority. I told them that. You don't have authority to adopt a separate noise regulation." Record, Exhibit 21 at 84. Commission minutes report: "[Attorney Andres] explained that the authority to regulate noise rests with the Municipality not the Planning and Zoning Commission and could only be accomplished by following the process to adopt a Town Ordinance." Record, Exhibit 10-24 at 3.

¹⁸ As set forth above, the Legislature, through CGS §14-164a has authorized the use. We presume neither the Commission nor the Intervenor will argue that the Commission's improper usurpation of the Legislature's authority to govern race times now enables it to limit noise as well.

with authority granted by the State. As the Connecticut Appellate Court has found, the noise pollution statutes in CGS § 22a-67 et seq. were intended to be "a comprehensive plan for state and local efforts to abate noise pollution:"

[W]e are left to conclude that the legislature has undertaken to preempt that field of legislation [noise pollution control] and to require that local efforts aimed at noise pollution control comply with the requirements it has enumerated by statute.

Berlin Batting Cages, Inc. v. Planning & Zoning Comm'n, 76 Conn. App. 199, 216 - 217 (2003). This statutory scheme provides that the Commissioner of Energy and Environmental Protection ("DEEP") will adopt regulations governing noise, and while municipalities may adopt the state regulations, or regulations of their own, they may only do so through enactment of an ordinance that is approved by the DEEP Commissioner. Id. at 217. The Amendments are not an "ordinance" enacted by the Town's legislative body 19 and there is no evidence that they have been approved by the DEEP Commissioner. Furthermore, the Berlin Batting Court found that CGS § 8-2 does not authorize zoning commissions to enact noise control regulations. Id. at 218. Therefore, the provisions restricting "unmufflered" activities and limiting racing, testing, qualifying and other Racing Activities are illegal attempts to regulate noise and as such, are preempted by state law.

3. The Commission improperly incorporated provisions into the Amendments without first considering whether they were appropriate, and evidence in the Record demonstrates that they are not.

The Commission never discussed the substance of the terms of the Court Order and Stipulation that were included in the Amendments or whether these provisions were appropriate for land use regulations under current facts and circumstances. This was because the commissioners mistakenly believed the Amendments simply spelled out provisions already in the Regulations through incorporation by reference. As a result, the Commission did not seek

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¹⁹ As discussed in fn. 4, supra, regulations enacted by a planning and zoning commission are not "ordinances."

testimony on these details (and to the contrary, specifically discouraged it). As discussed above, however, only "hours" of "races" were previously incorporated. Due to this misconception about what it was doing, the Commission adopted the Amendments without any evaluation or discussion whatsoever of the merits of numerous provisions that were entirely new to the Regulations.

CGS § 8-2, the statute that authorizes Commissions to adopt zoning regulations, allows

Commissions to consider a wide variety of factors in enacting regulations, such as the character

of the district, its suitability for particular uses, the most appropriate use of land, methods to
secure safety from fire, panic, flood, etc. The statute does not, however, allow a Commission to
simply defer to what private individuals have settled upon in private lawsuits without any
consideration whatsoever of whether such settlement terms further statutorily sanctioned
purposes. Nevertheless, evidence throughout the Record indicates that this is precisely what
occurred in this case.

The Commissioners' erroneous belief that they were simply restating what was already in the Regulations and their related failure to evaluate these provisions is evident from multiple statements by the Commission Chairman. For example, in a July 16, 2015 memorandum to the Commission, the Chairman explained that the Amendments simply:

... incorporated into our regulations (221.1 and 221.2)²⁰ the specifics of the stipulations that govern activities on the track. Rather than referring obliquely to these stipulations in our regulations by reference, we have incorporated the specifics of these stipulations into our regulations.

Record, Exhibit 1 at p. 2 para. 4. The Chairman repeated this position at the public hearing on the Amendments where he stated:

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The portion of Section 221.2 that incorporated the Judgment was eventually separated out into Section 221.3. See Record Exhibit 1, p. 3 of attached markup of regulation, and Exhibit 17 at sec. 221.3.

Now I'm going to ask you ... to keep on point on what this proposal is. <u>This is not a hearing about Sunday racing</u>. This is not forum [sic] to complain about the noise or traffic nor a forum to log the values and importance of the track to the community ... Please read what the zoning amendment is about and confine your comments to that.

Record, Exhibit 20 at pp. 12-13 (emphasis added).²² The Chairman then proceeded to explain that the Amendments focused on five areas, one of which was "the integration of the injunctions [the Court Orders] and the zoning board of appeals' decision about camping into the regulations."²³ Record, Exhibit 21at pp. 16-17.

As such, the Chairman did not view the hearing as a forum to carefully evaluate the substance of the terms of the Court Order (for instance, the Sunday racing prohibition) or Stipulation to determine whether it was appropriate to convert them into municipal land use regulations for the Town of Salisbury. Instead, he viewed the hearing simply as a forum to determine whether to take the <u>procedural</u> step of incorporating the terms of these legal documents into the Regulations.

The Commission's resolution of approval – which fails to address the substance of any of the provisions incorporated from the Court Order or Stipulation – is consistent with its Chairman's statements regarding the Commission's role. In particular, regarding the reason for approving Sections 221.1 and 221.3, the resolution states that the restrictions in these sections are "already part of the Town's zoning scheme" so incorporating the precise terms simply "allows the affected property owners to know what the zoning restrictions are without having to

²¹ The prohibition on Sunday racing is one of the Court Order terms.

²² The Chairman made a similar statement at the continuation of the public hearing wherein he explained: "This hearing is not about whether the track should exist. This hearing is not to log the accomplishments or denigrate the accomplishments of the track ... this hearing is not about racing on Sundays ... This is a very narrowly focused hearing on our zoning regulations." Record, Exhibit 21 at 5 (emphasis added).

The other four areas the Chairman described were 1) listing permissible accessory uses to a track; 2) making a minor revision to existing provisions on signage; 3) defining a "motor vehicle"; and 4) describing uses not considered accessory for which a special permit is required. Record, Exhibit 20 at 14-17.

review outside documents." <u>Record</u>, Exhibit 19 (emphasis in original). The resolution further explains that the two court actions have established the parameters for existing track operations and standards regarding camping use for decades, and concludes that:

Insofar as zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use, it is reasonable to incorporate those restrictions on land use within the zoning regulations themselves.

Record, Exhibit 18 at 1.

As noted above, however, the previous regulations incorporated only "hours" of "races" from the Court Order and did not incorporate any of the camping Stipulation. Thus, the minutia of race track operations including detailed <u>days</u> of operation, when mufflers are or are not required, accessway use, camping, lighting, parking and non-motorcycle racing activities were entirely new to the Regulations.

Furthermore, even assuming the accuracy of the approval resolution's statement that "zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use," any "reasonable expectations" concerning use of the Track arise only because there are court orders in place dictating what to expect. Just because affected parties may expect compliance with the terms of a court order in a dispute between private parties does not lead to the conclusion that those terms are appropriate as land use régulations; and the fact that they violate state law is a good indication that they are not.

Furthermore, the Record contained detailed evidence that these decades-old provisions are no longer appropriate because the expectations and requirements for operating a successful race track have changed significantly over the past few decades. For instance, racing events that were once amateur have become professional, with tracks such as Lime Rock now paying professional sanctioning bodies for the privilege of hosting a race weekend. These racing events

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are now typically three- or four-day events instead of two-day events. As a result, the two-day events with one day of racing that used to be held at the Track and similar tracks are no longer economically viable and far less common. See Record Exhibit 17 (Motion to Modify Injunction at p. 2 para. 7). Additionally, the provisions in the Court Order and Amendments restricting unmufflered events to Fridays and Saturdays (precluding a Thursday or Sunday) do not allow enough time to conduct the type of professional racing event that the sanctioning bodies now require. See id.

Thus, a race track must have the flexibility to operate at least some weekends during the year, including Sundays, and must be able to operate unmufflered events on Thursdays and/or Sundays. The need for such flexibility is further demonstrated by the fact that CGS § 14-164a expressly authorizes races on Sundays after noon and the fact that CGS 14-80(b) expressly exempts vehicles involved in races from muffler requirements. Unfortunately, as the Chairman made very clear, Sunday racing (and other operational restrictions from the Court Order) were not – in the Commission's view – on the table for discussion.

The Commission had a duty to independently consider the merits of the Amendment provisions rather than simply deferring to court decisions over 55 and 35 years old. In failing to evaluate these provisions, the Commission abdicated its responsibility to enact land use regulations that serve statutorily-approved purposes.

4. There is no legitimate land use basis to support the Amendments.

CGS § 8-2 lists numerous legitimate bases for land use regulations:

Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character

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of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Creating consistency with a court order or stipulation is not among the listed permissible reasons for land use regulation; and while the Commission or Intervenor may argue that the Amendments serve legitimate goals of land use regulation, as discussed above, the Commission never considered any evidence that would help it discern whether the specific provisions in the Amendments were necessary or appropriate to achieving such ends.

5. The Commission exceeded its statutory authority under CGS § 8-3(c) by requiring someone seeking to amend the RE District regulations to apply for and obtain a special permit as a precondition.

The Amendments include provisions requiring someone seeking to amend the race track regulations to not only file an application to amend the Regulations, but also to apply for and obtain a special permit as a precondition to applying for a zoning text amendment. Record, Exhibit 20, Sec. 221.1 a 8 and 221.3.d. Thus, only applicants holding a special permit for race track activities can petition the Commission to amend the race track regulations. There is no legal authority for this limitation. A planning and zoning commission may act only in accordance with authority delegated by the Legislature:

While it is true that local planning and zoning commissions and wetlands agencies have the authority to enact zoning, subdivision and wetlands regulations, such regulations must derive their authority from the General Statutes and may not conflict with such statutes.

Thoma v. Planning & Zoning Comm'n, 31 Conn. App. 643, 647 (1993). CGS §8-3(c), which governs the amendment of zoning regulations, does not require an applicant to hold a special permit or in any way limit who can seek such an amendment. Rather, § 8-3(c) provides:

All petitions requesting a change in the regulations or the boundaries of zoning districts shall be submitted in writing and in a form prescribed by the commission and shall be considered at a public hearing within the period of time permitted

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under section 8-7d. The commission shall act upon the changes requested in such petition.

CGS §8-3(c) (emphasis added). Thus, while the governing statute allows the Commission to dictate the form in which the petition must be submitted, it does not allow the Commission to dictate and limit who may submit the petition.

6. The Amendments contravene the requirement of CGS § 8-2(a) that zoning regulations be in conformity with the Comprehensive Plan.

The Legislature has determined that municipal regulations "shall be made in accordance with a comprehensive plan" CGS § 8-2(a) (emphasis supplied). The comprehensive plan has been found to consist of the zoning scheme found in the zoning regulations. Protect

Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Comm'n,

220 Conn. 527, 551 (1991). Although the scheme of zoning allows race tracks as a permitted use, the Amendments seek to limit the operation of a race track to such an extent that the use will be severely hampered. In particular, their illegal prohibition on Sunday racing, regulation of days and hours of racing and limits on unmufflered racing will put the Track at a severe competitive disadvantage with other national race tracks. See Section 3. above. Thus, the Amendments are not in conformity with the comprehensive plan.

7. The Amendments constitute illegal spot zoning, target a single property owner and seek to regulate a user rather than a use.

If a zone change or amendment that (1) affects only a small area of land and (2) is out of harmony with the comprehensive plan, then it is "spot-zoning". R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (3d Ed. 2007) § 4.8, p. 74. The RE zone is too small to contain more than one track, and thus, the Amendments affect only a very limited area – specifically, LRP's Property. As explained in Section IV.C.6 above, the Amendments are not in conformity with the comprehensive plan. Chief Justice Maltbie defined spot-zoning as "a

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provision in a zoning plan or a modification in such a plan, which affects only the use of a particular piece of property or a small group of adjoin properties and is not related to the general plan for the community as a whole." Maltbie, "The Legal Background of Zoning," 22 Conn. B. J. 2, 5 (1948). Therefore, the Amendments constitute "spot zoning".

Additionally, "zoning power may only be used to regulate the use, not the user of land."

T. Tondro, Connecticut Land Use Regulation (2d Ed.1992) p. 88. The Amendments improperly seek to regulate a specific user of land rather than a use generally. This is evidenced most clearly by the fact that the Amendments incorporate provisions of the Court Order and Stipulation, which pertain specifically to the Track. It is also evidenced by the reference to a particular neighboring property, 52 White Hollow Road, Record Exhibit 20 at Sec. 221.3.c, as well as the fact that the originally proposed version of the Amendments included numerous specific references to the Track. See Record Exhibit 1, attached markup of regulations at Sec. 221.2.a, b and c and Exhibit 17, Sec. 221.4.

Furthermore, the Amendments target a single property owner by attempting to regulate detailed aspects of LRP's business operations to an extent far beyond that of any other business governed by the Zoning Regulations. A review of the Zoning Regulations will demonstrate that no other use is subject to such detailed restrictions on days, hours and methods of operation.

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V. CONCLUSION²⁴

For the reasons discussed above, the Commission's decision to adopt the Amendments was arbitrary, illegal and an abuse of its discretion. Thus, LRP respectfully requests that this Court sustain this appeal and determine that the Amendments are illegal and without effect.

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²⁴ LRP's complaint also raises claims that the Amendments are improper because commissioners might interpret them to require LRP to obtain a special permit to continue existing, permitted operations and to obtain separate special permits for nearly every event it holds, contrary to how special permit procedures are applied to other entities in town. See Complaint paras. 46, 47, 50 and 51.b. This concern was based on various commissioners' comments throughout the proceedings on the Amendments. Due to the following events, which occurred after the complaint was filed, LRP is not addressing these issues at this time. On February 25, 2016 (after LRP filed its Complaint), Attorney Hollister, on behalf of his client the Intervenor, confirmed the legitimacy of LRP's concerns by urging this interpretation upon the Commission. In particular, he submitted a letter asking the Commission to, inter alia "establish a deadline by which the Track must submit a special permit and site plan application." After a public hearing, the Commission declined to grant the requested relief, determining instead that "we [the Commission] will not require Lime Rock Park to apply for a special permit for track activities at this time." April 18, 2016 Commission meeting minutes at p. 3. In light of this determination, LRP does not address the claims in those paragraphs at this time. Nevertheless, should the Commission, the Intervenor or the Court raise them in this appeal, or should they come before the Commission at a later date, LRP reserves all its rights to respond appropriately at that time. (Although this appeal Record does not include these proceedings, should the Intervenor or the Commission dispute this description of the issues or outcomes, or should the Court so request, LRP will gladly supplement the record as necessary.)

CERTIFICATION

This is to certify that a copy of the foregoing has been sent, via email and U.S. mail, postage prepaid, on the above date to:

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James K. Robertson, Jr.

NO. LLI CV 15 6013033S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT

.

v.

OF LITCHFIELD

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

OCTOBER 19, 2016

APPEAL BRIEF OF INTERVENING DEFENDANT LIME ROCK CITIZENS COUNCIL, LLC, WITH APPENDIX

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

For nearly 60 years, the Lime Rock Racetrack (the "Track") has conducted automobile racing on land in the Town of Salisbury and a residential neighborhood known as Lime Rock, but within limits first established in 1959 in a judgment entered by this Court in a private noise nuisance action, brought by neighboring homeowners and an abutting church and cemetery association. The judgment entered in 1959 banned Sunday racing and imposed restrictions on hours and type of racing on other days. In the 1970's, the Track, neighbors, and the Salisbury Zoning Board of Appeals ("ZBA") settled several court cases by stipulating to limits on overnight camping.

These limits on the Track's activities are important to this appeal because, for decades, the surrounding neighborhood – more than 160 homes within 1.5 miles of the Track, in a bucolic, rural area – has relied on these limits and their corresponding protection of quality of life, the right to quiet enjoyment, and property values; this appeal, at its core, is about the preservations of these essential limits.

Put another way, the Track, from its inception, has been adjudicated to constitute a private noise nuisance whose activities warrant strict controls. It has been the Track's relative compliance with the 1959 judgment, as well as stipulated modifications to that judgment entered in 1966, 1968, and 1988, that has led the Salisbury Planning and Zoning Commission ("PZC") historically to regulate the Track lightly, by merely incorporating the court orders by reference into the Zoning Regulations instead of completely spelling out the restrictions as regulations, and by not requiring the Track to obtain a special permit and site plan approval even though the regulations for decades have classified the Track as a special permit use. But this long-established *status quo* has come to an abrupt end in the past two years, as the result of the owner's efforts to convert the Track from the regional, auto-club based operation that it has always been, to a facility capable of hosting multi-day racing events that would attract national auto racing associations — which would attract tens of thousands more spectators and campers, and generate much more noise, traffic, and environmental impacts than have ever previously

descended on the Lime Rock neighborhood. This conversion would require races on Sundays, expanded racing hours on other days, and expanded overnight camping. And while proposing this massive transformation, the Track has also started to exceed the limits of the court stipulations by holding larger, longer, and noisier events, including "drifting" (where drivers engage in intentional skids, which produce screeching noise), motorcycle events (which the Track claims are not racing so long as one motorcycle does not pass another, regardless of noise),² and non-racing events such as car shows and festivals.

It is not a matter of record as to why the Track's owner, Skip Barber, proposes this conversion to a national event venue, but it is well-known that Mr. Barber is nearing retirement, and the facts in the record plainly suggest that he wants to sell the Track at a premium price that a national facility would command.

In July 2015, the Salisbury PZC, after several years of study and months of drafting, responded to the Track's expansion plans by distributing a proposal to amend the Zoning Regulations by making explicit the limits on Track activities that previously had only been incorporated by reference from court records and files. It is important to note that the PZC's amendments did not propose new substantive restrictions, but only spelled out previously incorporated restrictions. The PZC's reasons for making the restrictions explicit were that (1) citizens should not need to search through files at the Litchfield Court House or even PZC files to know what Salisbury's Zoning Regulations state; (2) regulation of the Track's land uses is and must be the responsibility of the Town of Salisbury, acting through its public agencies such as the PZC and ZBA, rather than the burden of private individuals acting to enforce court orders in noise nuisance litigation (to which neither the Town nor the PZC has been a party); and (3) changes in the Track's operations should originate as an application to the PZC or ZBA,

¹ See Record Exhibit ("RE") 22 at 124-25. ² RE 21 at 53.

where the proposal would be considered at a local public hearing, and where local agency action would be subject to review by this Court.

In response to the PZC's July 2015 regulation amendment proposal, in September 2015, the Track launched a two-part effort: (1) it challenged the amendments at PZC hearings; and (2) it filed affirmative litigation, petitioning this Court to modify the historically stipulated limits on Sunday racing, hours of racing on other days,³ and overnight camping. The Track filed its motions to "modify existing injunctions" in this Court on September 4, 2015, and then appeared at the PZC's September 8 and October 19, 2015 public hearings, making a variety of arguments and threats in opposition to the amendments.

As this Court is aware, to the date of this Brief, the Track's motions to undo the 1959-1988 court orders have been denied or stayed for a variety of procedural and substantive reasons. Thus, the focal point of the dispute among the Track, the PZC, and the Lime Rock Citizens Council and its individual and institutional members is now this zoning appeal, in which the Council has been permitted to intervene as co-defendant with the Salisbury PZC. The Council joins in the PZC's Brief, but also presents here several different perspectives and arguments, as follows:⁵

1. The Council intends to put the plaintiff to its proof regarding aggrievement, and will not stipulate to Lime Rock Park, LLC's claim to be automatically

During its expansion efforts, the Track has continually asserted that it only seeks "two Sundays" of racing, but this claim is based on the misleading, unenforceable distinction between "mufflered" and "unmufflered" racing, both of which are capable of generating nuisance noise. The Track seeks 20 Sundays of mufflered racing, and thus seeks Sunday racing throughout the nine month racing season. RE 10-14/A78.

⁴ Moreover, the Track's motions to modify the injunctions, in addition to being a misnomer (because the court orders presently in force are stipulations, to which the Track agreed, not mandatory injunctions imposed on the Track), have been disingenuous and misleading, see § II.C. infra.

⁵ The Track has made no claims in this appeal that the PZC violated any procedural requirements in its regulation amendment process.

aggrieved because in the Track's affirmative litigation, who owns or has a beneficial interest in the Track, or is a trustee, has been at issue, and still is.

- 2. The Council thoroughly disputes the Track's explanation of the judicial standard of review (Track's Brief at 10-11). The November 2015 amendments were legislative action, entitled to nearly conclusive deference; if this Court can conceive a rational basis for the amendments, then the PZC's action must be upheld.
- 3. This Brief reviews the well-established standards for briefing a legal claim, and explains how the Track's Brief fails to meet these standards in its claims of state preemption of Sunday racing restrictions; "not appropriate" regulation; "no legitimate planning basis" for regulation; failure to comply with "the comprehensive plan"; and spot zoning. For example, in its preemption claim regarding Sunday racing, the Track cites one case (Bauer), but simply does not discuss the law of preemption or apply preemption analysis to the facts in the record, or acknowledge the parts of General Statutes § 14-164a, § 8-2, and § 8-13 that allow municipalities to regulate racing and therefore undermine the Track's claim that "the Sunday prohibition on limits on unmufflered racing irreconcilably conflict [sic] with CGS § 14-164a." Regarding noise regulation, the Track asserts, with no discussion or support, that the State of Connecticut has "occupied the field" of regulation, but without defining the field and in the face of statutes and regulations that plainly permit municipalities to enact noise standards that are more stringent than state regulations. Moreover, the Track fails throughout its Brief to specify which sections, subsections, sentences, or phrases of the 2015 amendments it is challenging as illegal. Thus, several of the Track's assertions should be dismissed for failure to brief them adequately: .
- 4. While the Track's September 15, 2016 Brief selectively discusses the history of racing in Lime Rock before 1959 and asserts that the November 2015 amendments are illegal, the Track essentially skips over the highly relevant chronology from 1959 to 2015. A primary purpose of this Brief is to integrate chronologically the facts in the record regarding racing at the Track; the beginning, continuation, and revisions of zoning regulation of the Track's

activities; and the court actions and stipulated judgments. Presenting these parts in sequence demonstrates that the Track, in the stipulations, has for decades agreed to a ban on Sunday racing, as well as limits on days and hours of racing and camping, and thus has waived its challenge to the 2015 amendments regarding these subjects in this appeal.

5. This Brief then discusses the three arguments the Track has arguably briefed. First, in the alternative to its waiver arguments, the Council here explains that analysis of the text, legislative history, and context of General Statutes § 14-164a show that this statute limits municipal regulation of hours of racing on Sunday if and only if the municipality has otherwise allowed Sunday racing. The Town of Salisbury, through its zoning ordinance, has banned Sunday racing since 1985 by incorporating the stipulated judgments into town regulations. That is, acting pursuant to General Statutes § 8-1(a), the Town in 1956 established the PZC by ordinance as Salisbury's legislative body with regard to land use regulation, and the PZC has exercised that authority, as it is empowered to do by the Zoning Enabling Act, § 8-2, to ban Sunday racing. Section 14-164a does not preempt the Salisbury PZC from banning auto racing on Sundays.

Second, this Brief explains why the PZC is authorized to regulate land uses and days and hours of use so as to control, limit, prevent, or abate noise, especially nuisance noise. Indeed, land use regulation to control noise *sources* is a core function of zoning commissions. What the PZC may not do is set a decibel limit on specified activities, because the State has determined as a matter of public health and safety what decibel maximums should be the regulatory standard. The Salisbury PZC has not established a decibel level, but rather adopted regulations to ensure that on certain days and at certain times, there will be no noise from auto racing or camping.

Third, as to the 2015 amendment that merely restated a special permit requirement on the Track's operations, this Brief explains that the PZC is unquestionably empowered by State statute to subject a major land use within its borders to the special permit process, and that it first did so in 1985. These facts preclude the Track from challenging special permit regulation *per se* of its land use in this appeal. The Track's only "defense" to a special permit requirement is to

prove the existence and scope of non-conforming use rights, if any, that preceded the PZC's classification of the Track as a special permit use. The Track has never done so. (In fact, the Track in September 2015 asserted, without specifics or proof, that it is a non-conforming use, but since then has backed away from this claim, because it was pointed out at the hearings that a cardinal feature of a non-conforming use is that it *may not expand*.) The Track has no basis to challenge the 2015 amendment that continued the special permit requirement.

Thus, the Council and the PZC present ample bases for this Court to dismiss the Track's appeal.

It is noteworthy that the administrative record is actually very short; the record exhibits that present the facts relevant to this appeal and frame the legal issues are attached as the Appendix. The Court should note that Record Exhibits 16-31 to 16-838 are e-mails received by the PZC in October 2015, mainly in response to a highly misleading e-mail blast from the Track, encouraging its drivers, patrons, and supporters to lobby the PZC to not adopt the proposed amendments. Should this Court peruse these e-mails, it will see that many of them are misinformed about the facts and the regulation amendments, and that many e-mails were sent from countries and states other than Connecticut.

II. COUNTERSTATEMENT OF FACTS.

A. <u>Lime Rock Citizens Council.</u>

The Lime Rock Citizens Council ("LRCC") was formed in 2015, to support the PZC's response to the Track's potential expansion and independently oppose the Track's efforts.

RE 10-1/Appendix ("A") 7; RE 10-22A/A63; RE 10-20/A74; RE 10-19/A76. As of the

The Salisbury P&Z Commission's goal is to take control of regulating Lime Rock Park. . . . The people in opposition to Lime Rock have issued statements, letters, faxes and advertisements that grossly mislead, misrepresent, obfuscate and exaggerate what the requested changes entail, going so far as to claim it will mean the ruination of Trinity Episcopal Church across the street and cause "irreparable harm" to Music Mountain

⁶ Just before the October 19, 2015 PZC hearing, the Track sent an e-mail stating in part (RE 16-353A):

October 19, 2015 hearing, the LRCC had more than 250 property owner members and 400 individuals who had expressed support for the Council's efforts in petitions. RE 22 at 71/A154.

The Council's institutional members include Trinity Episcopal Church, established in the 1870's, which abuts the Track's north side; the Lime Rock Cemetery Improvement Association, which abuts the Track and the Church; and Music Mountain, a chamber music performance venue, established in the 1930's, that today records and broadcasts to a worldwide audience, especially on Sundays. RE 10-2/A9; RE 22 at 28-30/A143-45. Though Music Mountain is, as the crow flies, about two miles from the Track, the Track is at a lower elevation and in what is topographically a bowl, with Music Mountain near the top of that bowl; automobile racing is therefore audible at Music Mountain. *Id.* At the October 19, 2015 PZC hearing, Music Mountain President Nicholas Gordon explained that the Track's Sunday racing proposal would make it impossible for Music Mountain not only to record and broadcast music, but to continue to operate as a music venue. *Id.*

It is important for this Court to understand that the Council's position, from its formation, has been that the Track may continue to operate in compliance with the limits established from 1959 to 1988; the Council opposes the Track's expansion. RE 21 at 25-29/A110-14. The Council did not start the present fight.

B. <u>Chronology Of Track Operations, Zoning Regulation, And Stipulated Judgments, 1957-1988.</u>

In 1956, the Town of Salisbury, by ordinance, established the PZC as its agency to exercise the powers set forth in the Zoning Enabling Act, General Statutes § 8-2.7 A211. There is evidence in the record (RE 23) that auto racing in some form began at the location of what is now the Track in 1957, before the new PZC adopted regulations in 1959.

⁷ Municipal ordinances are subject to judicial notice. See General Statutes § 52-163.

Although court records are incomplete, those that have been located reflect that by writ and complaint dated August 20, 1958, approximately 25 individuals and the Lime Rock Cemetery Improvement Association initiated an action for an injunction to abate nuisance noise emanating from the Track. Trinity Episcopal Church was added as a party plaintiff in September 1958. This litigation was commenced as a civil action for an injunction in part because zoning regulations had not yet been adopted, racing had already begun, and noise impacts were most appropriately addressed under common law nuisance principles. In May 1959, this Court, after hearing, "granted detailed injunctive relief":

The order regulated the use of the race track by (1) enjoining racing on Sundays, (2) limiting mufflered racing to weekends between 9 a.m. and 10 p.m., with the exception of six days a year when racing could continue after 10 p.m. and (3) restricting unmufflered racing to Tuesdays, between 12 noon and 6 p.m., with the exception of 10 Saturdays a year and the 10 Fridays before them, and specified holidays, such as Memorial Day, the Fourth of July and Labor, between 9 a.m. and 6 p.m.

Memorandum of Decision/Order. *Adams v. Vaill*, Docket No. LLI CV 58 0015459S, Sept. 27, 2016. *See also* RE 10-17/A25.

When the PZC adopted a zoning ordinance in 1959, it included a Rural Enterprise ("RE") Zone, in which it placed the Track and in which auto racing was a permitted use. The 1959 regulations incorporated by reference the "Court Order dated May 12, 1959 . . . ," which stated that hours of racing must follow state law. Thus, as of 1959, this Court, by order, had banned Sunday racing and limited hours, and the PZC had established racing as a permitted use in the RE Zone, but subject to limits on hours of racing. Since then, controls of the Track have changed incrementally through stipulated modifications of the 1959 court orders, and through zoning regulation, first by incorporation by reference and now by adoption.

In March 1966, the Track and its plaintiff neighbors entered into a stipulation amending the 1959 court order. This stipulation⁸ continued the Sunday racing prohibition and other

To clarify terminology, in the 1959 noise nuisance case, the court entered a "judgment" in favor of the plaintiffs, which was not appealed, and may be referred to as a "court order." In later years, the Track and plaintiffs in the original nuisance action, or their successors, amended

restrictions, but added paragraphs expanding prohibited activity to include revving and testing of mufflered and unmufflered vehicles on certain days and hours; setting hours for transportation and loading of vehicles; prohibiting use of track loudspeakers during certain hours; and defining race cars. In this stipulation, the Track expressly agreed to abide by the limits first ordered by this Court in 1959, including the ban on Sunday racing.

In July 1968, plaintiffs filed a motion to modify the 1966 stipulation. RE 10-17/A31. Plaintiffs' motion was based on amendments to General Statutes § 14-80(c), a section referenced in the 1959 injunction and 1966 stipulation. The amended statute prohibited "unmufflered" vehicles "everywhere in the state." *See Adams v. Vaill*, 158 Conn. at 483-84. This Court thus modified the 1966 judgment "to prohibit the operation and use of unmufflered motor vehicles on Lime Rock Race Track" and ordered defendants to "cease and desist immediately from sponsoring the racing of said unmufflered vehicles." In 1969, however, the General Assembly further amended § 14-80(c) to allow unmufflered vehicle use "when such motor vehicle is operated in a race, contest or demonstration of skill or speed with a motor vehicle" *Id.* at 484 n.1.

In 1977 and 1978, three appeals were taken to Superior Court regarding a decision by the ZBA limiting overnight camping at the Track. The decision "allow[ed] camping in areas other than the racetrack infield, allowed spectators to camp at the racetrack in addition to camping by race participants and [set] the number of campers allowed at one time to 1,500 persons." In 1979, the court dismissed one of the appeals; the other two were concluded by stipulated (continued)

the 1959 restrictions by "stipulation," which the court then ordered as a "stipulated judgment." Thus, the terms "court order" and "stipulation" as used here synonymously, and they impart agreement of the parties to the court's entry of judgment.

⁹ In Adams v. Vaill, 158 Conn. 478, 481 (1969), the Supreme Court described this stipulation as "defin(ing) more precisely what sports car activities were proscribed and what were permitted. The amended decree made no significant changes in the times when the use of mufflered and unmufflered racing cars were permitted."

See the ZBA's March 24, 2016 Memorandum of Law supporting its Motion to Dismiss, in *Lime Rock Foundation Inc. v. Zoning Board of Appeals*, Docket No. LLI CV 77 0016404, p. 2.

judgments entered on September 19, 1979 that classified camping as a non-conforming use and established a limited geographic location for camping, a restriction on parking in the Track outfield, and a prohibition on ingress and egress on White Hollow Road during certain hours. RE 10-18/A41-42.

In 1985, while retaining the incorporated reference to the 1959 injunction, the PZC amended its regulations by adding a reference to "subsequent related Court Orders...."

RE 22/A131-38. This amendment established the possibility that an amended court order stipulated to by the private parties could be deemed an amendment to the zoning regulations, without the PZC following statutory procedures for amendments. These regulations also classified the Track as a special permit use.¹¹

In January 1988, remaining parties to the 1959 case (plaintiff Lime Rock Protection Committee, Inc. and defendant, Lime Rock Associates, Inc., then the Track owner) entered into an amended stipulation, "adding a restriction against motorcycle racing, and modifying the injunction due to a 1969 change in the language of General Statutes § 14-80(c) regarding unmufflered racing." This stipulation, RE 10-17/A37-40, which continued to prohibit racing on Sundays and specify hours for racing and limits on camping, is the operative stipulation today. ¹²

In July 2015, the PZC proposed the regulation amendments at issue in this appeal. As summarized earlier, these amendments ended the incorporation by reference of the 1979 and 1988 stipulations, and made the previously incorporated limits express, but made no substantive change to those limits. At the July 2015 PZC meeting, Chair Michael Klemens explained the rationale for the revisions:

It should be noted that statutory authority to require special permits was not adopted by the state legislature until 1959, see Public Act 59-614, § 2, and thus this power was not available when the PZC first adopted regulations.

¹² It should be noted that if this appeal by the Track is dismissed and the 2015 regulation amendments govern, the issue will arise as to whether the court stipulations are still necessary, or whether they are wholly or partially moot.

On the advice of our legal counsel, we have incorporated into our regulations (221.1 and 221.2) the specifics of the stipulations that govern activities on the track. Rather than referring obliquely to these stipulations in our regulations by reference, we have incorporated the specifics of these stipulations into our regulations. We now have a seamless and transparent set of regulations which mirror the stipulations. This confirms that violations of the stipulations are violations of our zoning, which may be helpful to all parties as it provides a local level of resolution before having to incur the expense of returning to the courts to address purported violations. It also respects our legal authority over the RE zone as a court-approved change in those stipulations would require a corresponding change in our zoning regulations in order to be permitted. This should give the community a higher level of comfort than the *status quo*.

RE 2 at 2/A2.

As the PZC's process continued in 2015, the Track began to outline its expansion plans and to voice its opposition to the proposed zoning amendments. As described above, the LRCC formed in response. See RE 21 at 25-29/A110-14.

C. The Track's September 2015 Litigation.

Several days before the Salisbury PZC commenced its hearings on the amendments, the Track filed in this Court motions to modify the 1979 and 1988 stipulated judgments, so as to allow Sunday racing, expand hours on other days, and allow expanded camping. RE 10-17/A11; RE 10-18/A43 is a chart summarizing the changes and expansions sought by the Track. As the LRCC has pointed out in Objections to the Track's Motions to Modify Injunctions filed in October 2015, the Track's filings were misleading and disingenuous because they did not accurately describe the changes that the Track wanted to make to its operations; Proposed to

As this Court is aware, in September 9, 2016, the motions to modify camping restrictions were dismissed for failure to exhaust administrative remedies (an application to the PZC and ZBA), and the motion to allow Sunday and expanded racing was stayed pending this appeal.

As an example of the Track's misleading court filings, its September 4, 2015 Motion to Modify Injunction and Judgment asks for:

[[]unmufflered] activities on a very limited number of Thursdays instead of Tuesday afternoon that week. Modest extension of Friday morning and Saturday afternoon operation times are also required. Lime Rock would also need to conduct unmufflered activities on two Sundays per year However, Lime Rock does [also] seek to permit mufflered activities on some Sundays

give notice only to these individuals who were parties to the 1959 nuisance action and are still alive; ¹⁵ and sought an expedited evidentiary hearing (six weeks hence) at which it proposed to prove, among other things, that the Track would not be financially viable going forward if it could not expand racing to multi-day national events. ¹⁶

D. <u>September 8, 2015 PZC Hearing.</u>

At the PZC's first hearing session, Chair Dr. Klemens and Attorney Andres explained the rationale for the amendments. RE 21 at 1-21. The Track's counsel, Attorney Robertson, staked out a variety of positions, but his remarks are most notable for (1) his statement that auto-racing at the Track is a non-conforming use; RE 21 at 21-24, 74-83; and (2) no mention at all of General Statutes § 14-164a. Representatives of the Lime Rock Citizens Council explained the Council's concerns and stated the Council's support for the amendments, RE 21 at 25-29, 50-59, 83-87/A109-29.

E. October 19, 2015 PZC Hearing.

At the continued hearing (RE 22), the Track backed off its non-conforming use claim, and shifted its argument to § 14-164a. RE 12 at 24. LRCC's representatives made an additional presentation. Martin Connor, a certified planner, explained why the 2015 amendments are consistent with Salisbury's Plan of Conservation and Development (which the Track does not dispute in its Brief). RE 22 at 82-86/A165-69. Several LRCC leaders spoke, *see* RE 22 at 28-30, 35-36, 39-47, 55-57, 72-93/A130-75. LRCC's counsel made a multi-part presentation regarding:

⁽continued)

RE 10-17/A20. This is how the Track tried to camouflage multi-day national racing events and racing on Sundays throughout the year.

By proposing such notice, the Track plainly omitted giving notice to necessary and indispensable parties, such as existing property owners impacted by noise and traffic from Track events.

Thus, the Track proposed expedited court action, with no opportunity for concerned property owners to conduct discovery, and without articulating a legal basis for amending the 1988 stipulation other than "the racing business has changed."

- the anomalous situation presented by the incorporation by reference of court orders as regulations;
- the need for controls of the Track to be part of the Zoning Regulations; and
- suggested wording improvements to the proposed amendments.

RE 22 at 71-82/A154-63.

F. PZC Decision, December 2015; Final Regulation.

The PZC deliberated on November 16, 2015 (RE 23), and adopted a resolution (RE 19/A100) explaining its cogently rational planning justifications. The final regulation is RE 20/A103.

The Track then served this appeal. The Lime Rock Citizens Council moved to intervene, which this Court granted on May 16, 2016.

III. THE CITIZENS COUNCIL PUTS THE TRACK TO ITS PROOF REGARDING AGGRIEVEMENT.

The Track asserts that appellant Lime Rock Park, LLC is the record owner and has been throughout the proceedings at issue in this appeal. It has the burden to prove that the LLC's ownership has been continuous and uninterrupted, and also to disclose all beneficial owners or trustees, *see* General Statutes § 8-7c.

The Track is not classically aggrieved in the sense that the regulation amendments do not make any substantive change in the rules governing track operations. Classical aggrievement requires an impact on the use of property. *Lewis v. Planning and Zoning Commission*, 62 Conn. App. 284, 297 (2001). The Track cannot argue that the 2015 amendments have substantively altered much less adversely impacted its operations or obligations.

IV. THE TRACK HAS FAILED TO BRIEF, AND THUS HAS ABANDONED, SEVERAL CLAIMS.

A. Issues That Are Not Briefed Are Abandoned.

It is axiomatic that "issues that are initially raised in a zoning appeal which are not briefed by the plaintiff will be considered abandoned and will not be decided." *Cybulski v. Planning and Zoning Commission*, 43 Conn. App. 105, 108-09, *cert. denied*, 239 Conn. 949

(1996). Our law is "well settled that [courts] are not required to review claims that are inadequately briefed We have consistently held that analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." *Tonghini v. Tonghini*, 152 Conn. App. 231, 239 (2014). "Where the parties cite no law and provide no analysis of their claims, we do not review such claims." *Jackson v. Water Pollution Control Authority*, 278 Conn. 692, 711 (2006).

"Mere conclusory assertions regarding a claim, with no mention of relevant authority and minimal or no citations from the record will not suffice." *Ross v. Zoning Board of Appeals*, 118 Conn. App. 90, 101 (2009). "We need not consider on appeal abstract principles that merely are restated, even when they have citations of authority, . . . and no attempt is made to apply such authority to the facts of the case." *Raymond v. Zoning Board of Appeals*, 76 Conn. App. 222, 251-52, *cert. denied*, 264 Conn. 906 (2003).

B. Claims Abandoned By The Track.

Pages 16 to 24 of the Track's Brief present four claims that are inadequately briefed.

At pp. 16-20, the Track argues (subheading #3) that the PZC "improperly incorporated provisions into the Amendments without first considering whether they are appropriate "

This argument is, first of all, inaccurate; the PZC did not "incorporate provisions into the Amendments", but published a proposal to amend the Salisbury Zoning Regulations by spelling out restrictions previously incorporated by reference to court documents. Second, the Record is clear that the PZC engaged in a months of study before formally publishing its proposal in July 2015. The minutes of the PZC's July 2015 meeting, RE 1, and PZC Chair Michael Klemens' September 8 description of the process leading to the amendments (RE 22 at 1-19) wholly contradict the Track's assertion that the PZC acted without first considering what it was doing.

However, the most glaring insufficiencies regarding this third argument are that "appropriate" is not a legal claim; and pp. 16-20 do not cite any statute or case setting forth a procedural or substantive standard that the PZC's process and amendments allegedly violated.

Though not clear, the Track's argument (pp. 17-19) seems to be that General Statutes § 8-2 "does not . . . allow a commission to simply defer to what private individuals have settled upon in private lawsuits." But § 8-2 does not discuss deference to private lawsuits. And how does spelling out stipulated restrictions incorporated by reference for decades constitute "deferring" to settlement of litigation among individuals? The Track also asserts that there are minor differences between the scope of the restrictions set forth in the court orders and the amended regulations, but fails to explain why such differences are substantive or illegal. Moreover, it is undisputed that the proposed amendments were published and filed as required by state statutes.

On p. 19, the Track asserts that "these decades-old provisions [the stipulations now spelled out] are no longer appropriate because the expectations and requirements for operating a successful racetrack have changed significantly over the past few decades." In other words, the Track asserts that the amendments (which again, contain no new restrictions) are "inappropriate" because they *prohibit* the type of *expansion* that the Track claims is necessary to attract large, national racing events. But this is plainly not an argument as to why the 2015 amendments are illegal. The Track's third argument should be dismissed for failing to present any statutory or case law basis for the amendments being unlawful.

The Track's fourth argument, consisting of one paragraph on pp. 20-21, is similarly deficient. Its heading asserts "no legitimate land use basis" for the amendments. "Legitimate" is not a legal standard. This subsection quotes part of General Statutes § 8-2, but then offers no textual analysis and cites no case law.

The Track's sixth argument, on p. 22, also one paragraph, purports to argue that the amendments violate the requirement of § 8-2(a) that zoning regulations "be in conformity with the Comprehensive Plan." The Brief cites one case that states this "requirement" (which is circular, because it is long established in Connecticut case law a town's zoning regulations *are* its comprehensive plan), but contains no explanation of how the amendments fail to meet a legal standard. Incredibly, the Brief only asserts under this subheading that the amendments will "severely hamper" the Track's expansion plans and will put it at a "competitive disadvantage";

but these claims are supported by nothing more than conclusory statements by Attorney Robertson at the public hearings.

The Track also asserts (p. 22-23) that the amendments are spot zoning. The Brief then wholly misstates how Judge Fuller's treatise on Connecticut land use law defines spot zoning, ¹⁷ cites only a 1948 *Connecticut Bar Journal* article on spot zoning (and no cases from the article or since); and most glaringly, fails to explain how amendments to regulations that do not change the Track's zoning classification (Rural Enterprise) and do not otherwise require any substantive change in the Track's operation can possibly be spot zoning, which by definition is a change of use classification of a small parcel. The Track has failed to adequately brief its spot zoning allegation.

Finally, as to the Track's claim that the zoning amendments, as they relate to days and hours of racing and race car activities, are preempted by General Statutes § 14-164a, the Track's explanation of the applicable law consists of a single, eighteen word quote from one case, *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 221, 232 (1995), and "analysis" of § 14-164a that is little more than using bold typeface and underlining to emphasize words. Thus, the Track's preemption discussion ignores case law that recognizes overlapping or concurrent authority of statutes and local ordinances, and state statutes § 8-2 and § 8-13 that authorize local regulation of auto racing. The Track's briefing of preemption does not satisfy the most minimal standard for adequate argument. Nonetheless, in the alternative, § VII below addresses § 14-164a and preemption.

Spot zoning is a land use reclassification of a small parcel that establishes a use substantially different from abutting or neighboring uses. Fuller, *Connecticut Land Use and Practice*, § 4.8 (2015).

V. STANDARD OF REVIEW.

A. Zoning Commissions Have Wide And Liberal Discretion To Amend Their Regulations.

"A local zoning authority . . . acts in its legislative capacity when it enacts or amends its regulations." *Morningside Association v. Planning and Zoning Board*, 162 Conn. 154, 157-58 (1972). "The proper, limited scope of judicial review of a decision of a local zoning commission . . . amending zoning regulations is well established. The commission, acting in its legislative capacity, has broad authority to adopt amendments." Internal punctuation omitted. *Harris v. Zoning Commission*, 259 Conn. 402, 415-16 (2002).

"This legislative discretion is wide and liberal, and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." *Id.* "The courts allow zoning authorities this discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions which create the problem and shape the solution." *Burnham v. Planning and Zoning Commission*, 189 Conn. 261, 266 (1983). "The responsibility for meeting [changing] demands rests . . . with the reasoned discretion of each municipality acting through its duly authorized zoning commission." *Harris v. Zoning Commission*, 259 Conn. at 417.

B. Scope Of Review Of Legislative Amendments.

"Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion." *Campion v. Board of Aldermen*, 278 Conn. 500, 560 (2006). "[T]he test of the action of the commission is twofold: (1) The zone change must be in accord with the comprehensive plan . . . and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2." *Harris v. Zoning Commission*, 259 Conn. at 417. "A change in zoning regulations only has to meet one of the factors in General Statutes § 8-2, and the commission does not have to consider the impact of the amendment on a particular site." Fuller, *Connecticut Land Use Law and Practice*, § 33.2 (4th ed.), *citing Protect*

Hamden/North Haven from Excessive Traffic and Pollution, Inc. v. Planning and Zoning Commission, 220 Conn. 527, 547 (1991).

"Whenever [a zoning] commission makes any change in a regulation . . . it shall state upon its records the reason why such change is made." General Statutes § 8-3(c). The PZC did this in its motion to approve the Petition to Amend that is the subject of this appeal. RE 19. "Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of witnesses and the determination of issues of fact are matters solely within the province of the agency." *Burnham v. Planning and Zoning Commission*, 189 Conn. at 265. "The action of the commission should be sustained if even one of the stated reasons is sufficient to support it." *Id*.

In reviewing a decision made by a zoning commission acting in its legislative capacity, "it is not the function of the court to retry the case." *Id.* The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached." *Id.*

"Furthermore, a zoning regulation is entitled to a presumption of validity." *Bauer v.*Waste Management of Connecticut, Inc., 239 Conn. at 529. "This presumption yields only when a party challenging the regulation establishes beyond a reasonable doubt that the regulation is invalid." Id. "The burden of proving that the [regulation] is invalid rests upon the party asserting its invalidity." *Pollio v. Planning* Commission, 232 Conn. 44, 49 (1995).

Every intendment is to be made in favor of the validity of a [local legislative enactment] and it is the duty of the court to sustain [it] unless its invalidity is established beyond a reasonable doubt.... If there is a reasonable ground for upholding it, courts assume that the legislative body intended to place it upon that ground and was not motivated by some improper purpose.... This is especially true where the apparent intent of the enactment is to serve some phase of the public welfare.

Modern Cigarette, Inc. v. Town of Orange, 265 Conn. 105, 118 (2001).

Applying the foregoing standard of review to the record of this appeal, this Court must dismiss plaintiffs appeal because the PZC, especially in RE 2 and RE 19, has stated rational,

practical, logical, and legal reasons for spelling out in the Zoning Regulations the court-ordered restrictions previously incorporated by reference.

VI. THE TRACK HAS WAIVED ITS CHALLENGES TO BANS ON SUNDAY RACING, LIMITS ON HOURS OF OPERATION, AND LIMITS ON CAMPING, BECAUSE IT HAS PREVIOUSLY STIPULATED TO JUDGMENTS IMPOSING THESE LIMITS.

"The standards for waiver are well-established in Connecticut; waiver involves 'the intentional relinquishment of a known right." Citicorp Mortgage, Inc. v. Tarro, 37 Conn. App. 56, 60 (1995). "Intention to relinquish must appear, but acts and conduct inconsistent with intention to assert a right are sufficient. Thus, waiver does not have to be express, but may consist of acts or conduct from which waiver may be implied. In other words, waiver may be inferred from the circumstances if it is reasonable to do so. Whether conduct constitutes a waiver is a question of fact." Jacobson v. Zoning Board of Appeals, 137 Conn. App. 142, 150 (2012). The concept of waiver has been applied in the context of at least one zoning appeal. See Blakeman v. Planning and Zoning Commission, 82 Conn. App. 632, 641 n. 8 (2004) (by filing second zoning application, property owner waived rights under prior application). The Track waived its right to challenge the 2015 zoning amendments.

As discussed above, the 2015 amendments are essentially a codification of the stipulated judgments agreed to by the Track. The Track agreed to a ban on Sunday racing, limited racing hours on other days, and limits on camping, in 1966, 1968, 1979, and 1988. Similarly, the special permit requirement for the Track has been in place and unchallenged for decades. If the Track disagreed with proposed stipulations, it had the right to continue litigating. It did not do so. Instead, the Track has largely, until recently, abided by the terms of the stipulations. The PZC, in 2015, in effect, amended its regulations based on the Track's stipulations to limits on racing. The Track's acquiescence to the stipulated judgments prohibiting Sunday racing, limiting hours of operation, and placing restrictions on camping constitutes a waiver of the claim that the 2015 zoning amendments are substantially illegal.

The Track's waiver of its challenges is also based on the principle that injunctions relating to the use of land are *in rem* and run with the land. See Commissioner of Environmental Protection v. Farricielli, 307 Conn. 787, 798-806 (2013). In Farricielli, the Supreme Court found guidance "in a well-established line of nuisance cases that treat injunctions . . . as in rem orders that bind nonparties with possessory rights to the property. Those courts recognize that to decide otherwise would eviscerate the courts' power to vindicate their judgments by simply transferring an interest in the subject property to a third party" Id. at 800. Thus, even if this Court were to sustain the Track's appeal and invalidate the 2015 amendments, per se, the court orders as entered in 1979 regarding camping and 1988 regarding racing will remain in place, because those orders govern the use of the Track's property independent of the Zoning Regulations. The Track agreed to this governance in its stipulations.

Thus, the Track has waived its challenges to the 2015 regulation amendments because (1) the PZC incorporated limits and restrictions on racing and camping that the Track has previously accepted and has complied with for decades; (2) if the Track objected to regulations incorporating court orders, it was required to do so when the incorporation first occurred, not when the PZC took the procedures step of spelling out the restrictions; and (3) the stipulations are injunctions are *in rem*, and thus even if the Court were to overturn the 2015 amendments, the restrictions will still bind the Track. Based on these facts and circumstances, the Track has intentionally relinquished its right to challenge the 2015 zoning amendments regarding Sunday racing, hours of racing, and camping.

VII. THE 2015 AMENDMENT REGARDING SUNDAY RACING IS NOT PREEMPTED BY GENERAL STATUTES § 14-164a.

A. <u>Connecticut Law Regarding Preemption</u>.

Connecticut law with regard to preemption was recently summarized in *Town of Rocky Hill v. SecureCare Realty, LLC*, 315 Conn. 265 (2015). In *SecureCare*, the Connecticut Supreme Court considered whether the legislature, by its enactment of General Statutes § 17b-372a, intended to preempt the application of local zoning laws to private nursing

homes that operate under contracts with the state. The Court reversed a trial court decision dismissing the town's action for declaratory and injunctive relief, which was based in part on its claim that § 17b-372a preempted local zoning regulation. The Court set forth the principles guiding a two-pronged analysis of preemption: "A local ordinance is preempted by a state statute whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter or whenever the local ordinance irreconcilably conflicts with the statute."

B. Textual Analysis Of § 14-164a And The Context Of Other Statutes Demonstrate
That The Legislature Has Not Intended To Occupy The Entire Field Of
Regulation Of Auto Racing.

The Track has not clearly argued that the State occupies the field of auto racing on Sunday, but its Brief hints at such a claim, so the Council will address it.

Preemption analysis first requires consideration of whether the legislature has demonstrated an intent to occupy the entire field of regulation. As the Court reasoned in *SecureCare*: "When the legislature intends for a statutory provision to apply exclusive both of other statutes, and of other types of law, it knows how to say as much." *Id.* at 296. Usually, this is done by using the words "notwithstanding any provision of." General Statutes § 14-164a contains no such language.

Second, the text of § 14-164a expressly recognizes municipal regulation of Sunday racing. The statute since at least 1939 has recognized that, while racing "may" be conducted on certain hours and days, "[no] race or exhibition shall take place contrary to the provisions of any

¹⁸ See e.g. General Statutes §§ 51-164p(a) and (b) relating to fines for violations ("Notwithstanding any provision any provision of any special act, local law or the general statutes"); § 13a-58a prohibiting zone changes to property within limits of a laid out highway ("Notwithstanding any provisions of the general statutes or any special act to the contrary, no zoning commission . . . shall change the zone"); Public Act 16-202, § 1, regarding business signage on the Connecticut antiques trail ("Notwithstanding any provision of the general statutes or any municipal zoning ordinance or regulation, except those ordinances or regulations pertaining to the size of signage or flags").

... town ordinance." Emphasis added. From its inception, § 14-164a has used the word "may" to describe provisions relating to days and hours of operation and the word "shall" to describe the authority of municipalities to ban or limit racing by ordinance. 19

Applying the rules discussed in n.17 to § 14-164a supports the conclusion that § 14-164a(a) is not mandatory in the sense of commanding towns to allow Sunday racing. The portion of § 14-164a(a) that includes hours and days is stated in the affirmative and includes no negative words. Moreover, the statute's reference of hours and days of operation is peripheral to its overarching purpose, which is driver safety.²⁰

The Track argues (Brief at 12 n.13) that the phrase "no race or exhibition shall" relates only to the words immediately preceding it, which refer to the option given to a town to "issue a permit allowing a start time prior to [noon] on any Sunday." But that is not what the statute says. If the legislature intended to prohibit a town from banning Sunday racing, it would have said: "The legislative body of the town in which the race or exhibition shall take place may specify hours of racing on Sunday, but may not prohibit racing on Sunday."

The Track also asserts that the statute limits the right to promulgate ordinances to the "legislative body of the . . . town." But the reference to legislative body in § 14-164(a) is limited to its permit-issuing function. The statute does not, with reference to ordinances, limit such

A general rule of statutory construction provides that the word "shall" connotes a mandatory duty while the word "may" implies permissive action. *Brown v. Smarrelli*, 29 Conn. App. 660, 663 (1992). In construing the word "may," courts "determine whether a statute is mandatory or directory by testing 'whether the prescribed mode of action is the essence of the thing to be accomplished, or in other words, whether it relates to a matter of substance or a matter of convenience. . . . If it is a matter of substance, the statutory provision is mandatory. . . . If, however, the legislative provision is designed to secure order, system and dispatch in the proceedings, it is generally held to be directory, especially where the requirement is stated in affirmative terms unaccompanied by negative words." *Id.* at 664

An insight into the etiology of § 14-164a is found in its 1939 legislative history, where testimony on a proposed amendment noted that the original "bill... was adopted in 1935 putting on the State Police the burden of inspection of race tracks and place of exhibition of motor vehicle race or motorcycle race." Conn. General Assembly, 1939, Hearing of Motor Vehicle Standing Committee, p. 58 (testimony of Commissioner Anthony Sutherland, State Police Dept., regarding H.B. 580 AN ACT CONCERNING MOTOR VEHICLE RACING)/A212.

ordinances to those promulgated by the "legislative body of the town." The statute refers broadly to "any . . . town ordinances" (emphasis added). Several sources show that with regard to zoning, the legislature uses "ordinance" and "regulation" interchangeably. See General Statutes § 8-2i, § 15-91, § 25-109g, § 30-6, and § 30-44. The General Statutes sometimes refer to zoning regulations as an "ordinance"; for example, General Statutes § 14-390(a) contemplates zoning ordinances in its provision that "[a]ny municipality may, by ordinance, regulate the operation and use, including hours and zones of use, of snowmobiles. . . . " Driska v. Pierce, 110 Conn. App. 727 (2008) involves a zoning ordinance promulgated under the authority of § 14-390. Indeed, in Land Use Law and Practice § 1.2 (4th ed.), Judge Fuller explains that "[m]unicipal land use regulation must be carried out by ordinance, and the ordinance must be consistent with the enabling statute." See also, Konigsberg v. Board of Aldermen, 283 Conn. 553, 557-58 (2007). Thus, § 14-164a contemplates zoning regulations governing and banning Sunday racing.

Other statutes demonstrate § 14-164a does not constitute state occupation of the field of auto racing. Pursuant to General Statutes § 7-148(c)(7)(H)(ii), municipalities have the authority to adopt ordinances to "[r]egulate and prohibit the carrying on within the municipality of any . . . business . . . constituting an unreasonable annoyance to those living and owning property in the vicinity." Pursuant to § 7-148(c)(7)(H)(vii), a municipality may by ordinance "prohibit, restrain, license and regulate all sports, exhibitions, public amusements "²¹

Authority to separate and regulate land uses and their impacts is found in General Statutes § 8-2(a), which states: "[Zoning] regulations shall be designed to lessen congestion in the streets [and] with reasonable consideration as to the character of the district and its peculiar

In only two of the dozens of enumerated powers in § 7-148(c) is a municipality precluded from regulating where a local zoning commission exists (§ 7-148(c)(8)(C), which permits municipal regulation of excavation "except where there exists a local zoning commission"; § 7-148(c)(7)(A)(iv), which permits municipal regulation by ordinance of parked trailers and trailer parks "except as otherwise provided by special act and except which there exists a local zoning commission so empowered.")

suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality." This statute also grants zoning commissions authority to permit certain classes of uses only after obtaining a special permit or special exception "subject to standards set forth in the regulations and conditions necessary to protect public health, safety, convenience and property values." Thus, § 8-2 grants broad authority to zoning commissions to control adverse impacts of land uses through regulations. The Track cannot seriously argue that the Salisbury PZC has no jurisdiction to regulate the Track's operations. Salkin, *American Law of Zoning*, § 18.64 (2011)/A204 (national survey of zoning regulation of racetracks).

Finally, in its enactment of General Statutes § 8-13, the legislature has recognized that zoning regulations "may impose other and higher standards than are required by any other statute, bylaw, ordinance or regulation." Where this happens, "the provisions of the regulations made under the provisions of this chapter shall govern." The reverse is required "[i]f the provisions of any other statute, by law, ordinance or regulation . . . impose other or higher standards" than those in the zoning regulations. Thus, § 8-13 contemplates that statutes, ordinances and regulations may, and often do, have different standards and provides that, when that happens, higher standards prevail. Section 8-13 cements the conclusion that the Salisbury PZC has the authority to regulate auto racing, including banning it on Sunday, that the state has not occupied the field of auto racing regulation.

C. The 2015 Zoning Amendment Confirming The Ban On Sunday Racing Does Not Irreconcilably Conflict With § 14-164a.

With respect to the second prong of pre-emption analysis, whether a local ordinance irreconcilably conflicts with a statute, *SecureCare* explains:

Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives. That a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through local regulation, so long as there is not conflict with the state legislation. Where the state legislature has delegated to local government the right to

deal with a particular field of regulation, the fact that a statute also regulates the same subject in less than full fashion does not, ipso facto, deprive the local government of the power to act in a more comprehensive, but not inconsistent, manner. A regulation is not necessarily inconsistent because it imposes standards additional to those required by a statute addressing the same subject matter. Where local regulation merely enlarges on the provisions of a statute by requiring more than a statute, there is no conflict unless the legislature has limited the requirements for all cases. As long as the local regulation does not attempt to authorize that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict.

315 Conn. at 295-96.

The Track has failed to establish that the zoning amendments irreconcilably conflict with § 14-164a. Doing so would require the Track to show that § 14-164a affirmatively authorizes Sunday racing. As *SecureCare* and other preemption cases instruct, "this can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives." 315 Conn. at 295.

The primary purpose of General Statutes § 14-164a is to enhance motor vehicle safety, including the safety of both drivers and spectators at racing events. Subsection 14-164a(c) authorizes the Commissioner of Motor Vehicles to adopt "regulations . . . concerning mandatory safety equipment for vehicles that participate in any race or exhibition conducted in accordance with the provisions of this section." Subsection 14-164a(d) sets fines for "[a]ny person participating in or conducting any motor vehicle race or exhibition contrary to the provisions of this section." No part of the legislative history of § 14-164a reflects any intention by the legislature to dictate that Sunday racing must be allowed, or that local regulation is illegal.

Connecticut case law has long recognized the overlapping jurisdiction of state and local authorities. As the Connecticut Supreme Court recognized in *Aaron v. Conservation Commission*, 183 Conn. 532, 552 (1981) (no preemption by state or local inland wetlands regulations); "[A]lthough the statutes may seek to regulate the same activity, and thus the jurisdiction of the local and state agencies overlaps, it is not unusual for one seeking a permit for a certain use or operation to apply to and be given such permission or license by more than one agency of government." "That a matter is of concurrent state and local concern is no impediment

to the exercise of authority by a municipality through the enactment of an ordinance Where the state legislature has delegated to local government the right to deal with a particular field of regulation, the fact that a statute also regulates the same subject in less than full fashion does not, ipso facto, deprive the local government of the power to act in a more comprehensive, but no inconsistent manner." *Id.* at 543.

"A test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute forbids, or prohibits that which the statute authorizes; if so, there is a conflict. If, however, both the statute and the ordinance are prohibitory and the only difference is that the ordinance goes further in its prohibition than the statute, but not counter to the prohibition in the statute, and the ordinance does not attempt to authorize that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict." *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. at 235 (1995), citing *Aaron*, 183 Conn. at 544 (rejecting claim that zoning regulation setting height limit of 90 feet was preempted by state statute authorizing maximum height of 190 feet). Section 14-164a does not require towns to issue permits for Sunday racing or specify hours on Sunday when racing must be allowed. The statute simply does not contain any requirement or direction that conflicts with the PZC's ban on Sunday racing.

Thus, the 2015 amendment making the long-established ban on Sunday racing an express limit, does not conflict with § 14-164a.

VIII. THE 2015 AMENDMENTS DO NOT IMPERMISSIBLY REGULATE NOISE.

The Track (Brief at 14-16) asserts that "the Amendments" in general are preempted by State law because the State has "occupied the field" of noise regulation. The Track's Brief calls the amendments noise regulation "camouflaged as regulated hours of operation" (p. 14) and cites Conn. State Agency Regs. § 22a-69-1.8(e), which exempts auto racing from State noise regulation, as further preemption authority.

The Track's arguments, however, are imprecise at best and impenetrably vague at worst. An analysis of the text of the State noise statutes and regulations, and land use case law, demonstrates that municipalities are expressly permitted to regulate sources of noise so as to prevent neighboring uses from being in conflict; what they cannot do is establish maximum decibel levels, unless they do so in a manner consistent with state standards and approved by the Department of Energy and Environmental Protection ("DEEP") Commissioner. The Salisbury PZC has banned Sunday racing and limited hours of racing as a permissible regulation of noise sources. The PZC has not set a limit on decibels.

The starting point for analyzing this issue is General Statutes § 22a-67/A176, which contains the State General Assembly's legislative findings that, "Excessive noise is a serious hazard to the health, welfare, and quality of life of the citizens of the State of Connecticut; and "exposure to certain levels of noise can result in physiological, psychological, and economic damage." This statute then provides that "[responsibility] for control of noise rests with the state and political subdivisions thereof . . .," meaning municipalities. Thus, in noise regulations, the State does not "occupy the field."

Section 22a-69/A179 establishes a "statewide program" of noise regulation, administered by the DEEP Commissioner. Section 22a-73(a)/A184, however, states that municipalities are authorized to "carry out and effectuate the purposes and policies of this chapter." Subsection (b) authorizes municipal noise control ordinances, which may include "(1) Noise levels which will not be exceeded in specified zones or other designated areas" and "(2) designation of an existing board or commission to direct such programs." Subsection (c) requires a municipal noise ordinance to be approved by the DEEP Commissioner, who must find the ordinance "in conformity with the state noise control plan." Finally, this subsection states: "Notwithstanding the provisions of this subsection [requiring DEEP approval and conformity], any municipality may adopt more stringent noise standards than those adopted by the commissioner, provided such standards are approved by the commissioner." *Id.*

So what is the State realm and the scope of municipal authority over noise? The text of Conn. State Agency Regs. provides the answer/A185. The regulations essentially establish only one type of substantive standard: *maximum decibel limits* from "emitters" (noise sources), with limits varying by the type of emitter and receptor (such as noise impacts from industrial uses on abutting residential uses), and by time of day (daytime/nighttime).

However, state regulations do not address municipal regulation of the location of noise sources and emitters, which is a core function of zoning commissions under General Statutes § 8-2, the Zoning Enabling Act. That statute allows zoning commissions to regulate land use to control "the density of population and the location and use of buildings, structures, and land . . .; to secure safety from fire, panic, flood, and other dangers"; and to regulate uses "with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings." In other words, a zoning commission may regulate a large commercial land use so as to protect neighboring homes from the dangers of excessive noise. Section 8-2 is express authority to regulate land use by separating noise emitters from noise receptors.

Thus, municipal zoning commissions have the authority to regulate land use to control noise impacts. What they may not do is establish their own decibel limits unless those levels are more stringent than state regulations and approved by the DEEP Commissioner. In other words, the state legislature has "occupied the field" only with regard to the narrow category of maximum decibel emissions between particular land use categories, but even then, only until a municipality, through its legislative body or designated board or commission, obtains state approval for a more stringent standard.

It is undisputed that Salisbury PZC has not adopted a decibel level for the Track, or asked DEEP to approve a specific standard more stringent than state law. And that is the point: In general, towns may regulate noise sources; in Salisbury, the PZC is regulating land use, not decibel levels.

The specific, narrow limit on zoning commission regulation of noise is revealed in *Berlin Batting Cages, Inc. v. Planning and Zoning Commission*, 76 Conn. App. 199 (2003). In that case, the Commission, without DEEP approval (*id.* at 215-16), adopted a regulation requiring certain uses to comply with specific decibel limits stated in Regs. Conn. State Agencies § 22a-69-1 to § 22a-69-7.4/A185-203. The Appellate Court held that the state had issued statewide standards for decibel levels, and the defendant Commission had not received approval to require compliance with such standards (even though the regulation only required compliance with state standards as published).²² The decision, however, does not go beyond the specific regulation of decibel levels.

The next issue is: Are auto racetracks somehow exempt from noise regulation? Conn. State Agency Regs. § 22a-69-1.8(e)/A193 exempts from state rules "Noise created by the use of property for purposes of conducting speed or endurance events involving motor vehicles. . . . " (Again, it should be noted that the exemption is from state regulations that only establish maximum decibel levels.) However, the exemption is "effective only during the *specific period(s) of time* within which such use is authorized by the political subdivision or governmental entity having lawful jurisdiction to sanction such use." Thus, the state regulatory exemption itself recognizes a zoning commission authority to regulate hours and days of auto racing.

The last dimension of this issue is whether zoning commissions in Connecticut are authorized to regulate automobile racetracks as a land use. Professor Salkin's *American Law of Zoning* in Chapter 18:64 at 18-192.1 (2011)/A204, states: "Racetracks, whether constructed for horses, dogs, cars, or motorcycles, may be subject to land use regulations intended to protect neighboring land from impacts such as noise, dust, traffic, safety concerns, and environmental damage." A204. The treatise notes that "total prohibition" on racing have been upheld by the

The Court also noted that "[while] the commission labeled the enactment at issue in this case a zoning *regulation* [original emphasis], while General Statutes § 22a-73 refers to "ordinances," "is of no consequence." 76 Conn. App. at 219.

courts. *Id.* Professor Salkin cites *Dow v. Town of Effingham*, 148 N.H. 121, 803 A.2d 1059 (2002)/A214; as upholding restrictions on racing related to "inspections, litter removal, overnight camping, liability insurance, noise and junk" as "rationally related to the protection of the public health, safety and general welfare." General Statutes § 8-2 plainly allows regulation of racetracks to protect the public from adverse impacts such as noise.

Finally, this Court should note that in a backhand (or perhaps backstretch) manner, the Track has long acknowledged the Town of Salisbury's regulation of racing based on noise levels. The Track not only has not opposed the different treatment of "mufflered" vs. "unmufflered" racing, but the Track in its September 2015 motions to modify the 1979 and 1988 injunctions has asserted that mufflered racing is so quiet as to be entitled to fewer limits and land use regulation, while conceding that unmufflered racing is more impactful and should be more limited. Thus, the Track itself has acknowledged noise levels from various forms of racing as a valid regulatory criterion.

IX. REGULATION OF THE TRACK BY SPECIAL PERMIT IS AUTHORIZED BY STATE LAW.

The 2015 amendments continue the classification of the Track as a use requiring a special permit and site plan approval. *See* RE 20, § 221.1.a(8) and § 221.3.d/A104, 105. As noted, racing has been a special permit use in the RE Zone for decades.

In its Brief at 21-22, the Track makes a bizarre claim that these amendments require an applicant for a regulation amendment to already have in hand a special permit. The Track asserts that the amendments violate General Statutes § 8-3(c), "which . . . does not require an applicant to hold a special permit or *in any way* limit *who* can seek such an amendment."

These two amendments do not require an applicant for a regulation amendment to already have a special permit. To the contrary, they express the legal reality that because the Regulations classify the Track as a special permit use and specify limits on activities at the Track, to change these limits would require an application for a regulation amendment, and then to conduct the activity allowed by the amendment, a special permit and site plan approval. In other words, the

limits on activities cannot be changed solely by applying for a special permit. Nothing in the regulation disables the Track or anyone else from applying for a regulation amendment (and the Council agrees that such a requirement would contravene state statutes). But this Court should not accept the Track's nonsensical view of what these two subsections require.

In other words, both § 221.1.a(8) and § 221.3.d provide alternative avenues to anyone seeking amendments to the respective subsections. The applicant "may" either submit a standard petition to amend the zoning regulations or "may" seek amendment of the regulations at the same time and in conjunction with a special permit application. Nothing in the text of § 221.1.a(8) or § 221.3.d requires any applicant seeking to amend the racetrack regulations "to apply for and obtain a special permit as a precondition to applying for a zoning text amendment," as the Track asserts.

In attacking the special permit provisions, what the Track is really doing is avoiding its prior non-conforming use claim. A use established prior to being classified as a special permit use would arguably be grandfathered from having to obtain a special permit for the specific use previously established, but would lose that status and would be required to conform to all regulations if and when it applied for a regulation amendment and special permit in conjunction with a change in Track operations. At that point, the Track would need to come into conformance.

Even if the Track were able to establish that certain uses are legally nonconforming,²³ this would not prevent the Commission from requiring a special permit. As the Appellate Court explained in *Ammirata v. Zoning Board of Appeals*, 65 Conn. App. 606, 613-614 (2001):

The Track has not established that Sunday racing and other disputed uses are legally nonconforming or that such uses have not been abandoned by waiver or court stipulation. For a use to be a vested nonconformity, it must be "lawful... and in existence at the time that the zoning regulation making the use nonconforming was enacted." *Helicopter Associates, Inc. v. City of Stamford*, 201 Conn. 700, 712 (1986). It was judicially determined by this Court in 1959 that the uses being conducted, including Sunday racing, constituted a nuisance and could not be continued. Hence, the uses, even if they existed, were not lawful and therefore furnish the racetrack and its owners with no vested rights as nonconforming uses.

Our case law makes clear that generally a municipality can regulate nonconforming use. Regulation of a nonconforming use does not, in itself, abrogate the property owner's right to his nonconforming use. A town is not prevented from regulating the operation of a nonconforming use under its police powers. Uses which have been established as nonconforming uses are not exempt from all regulation merely by virtue of that status. It is only when an ordinance or regulatory act abrogates such a right in an unreasonable manner, or in a manner not related to the public interest, that it is invalid.

In Taylor v. Zoning Board of Appeals, 65 Conn. App. 687 (2001), owners of land where sand and gravel excavations were conducted challenged the board's decision upholding the action of the town's zoning enforcement officer, who had issued a cease and desist order ordering the plaintiffs to stop their quarry operations because they had not applied for and obtained a special permit. Plaintiffs' claimed that because use of their property as a sand and gravel mine was a preexisting nonconforming use, they were not required to obtain a special permit. Id. at 691. The Court held that "the requirement that the plaintiff obtain a [special] permit was a reasonable regulation under the town's police powers." Id. at 698.

General Statutes § 8-2(a) authorizes local zoning commission to provide that "certain . . . uses of land are permitted only after obtaining a special permit . . . , subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values." The rationale behind special permits is that the nature of certain uses of land "is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc. of the site We also have recognized that, if not properly planned for, [such uses] might undermine the residential character of the neighborhood." Cambodian Buddhist Society of Connecticut, Inc. v. Planning and Zoning Commission, 285 Conn. 381, 426 (2008). The Commission plainly has authority to regulate a major land use like the Track by special permit.

X. CONCLUSION.

"The maximum possible enrichment of a particular landowner... is not the controlling purpose of zoning." *Primerica v. Planning and Zoning Commission*, 211 Conn. 85, 98 (1989).

Protection of established neighborhoods and community institutions is. Here, the PZC amended its regulations so as to clarify and preserve the balance between the Track's operations and the rights of the surrounding neighborhood, and did so in a substantively and procedurally correct manner.

For the reasons expressed here and those stated in the PZC's Brief, the Track's appeal should be dismissed.

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the Appeal Brief and Appendix were electronically delivered this 19th day of October, 2016, to all counsel of record and *pro se* parties and written consent for electronic delivery has been received from all counsel.

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DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

v.
PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL. : OCTOBER 19, 2016

BRIEF OF DEFENDANT PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY

THE DEFENDANT,
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OF THE TOWN OF SALISBURY

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	7. The amendments do not constitute spot zoning, target a single property owner, or seek to regulate a user rather than a use.	4
v.	CONCLUSION	5

The plaintiff, Lime Rock Park, LLC, appeals from the decision of the Salisbury

Planning & Zoning Commission ("Commission") amending sections of the Salisbury Zoning

Regulations ("Regulations") addressing Motor Vehicle race tracks.

I. STATEMENT OF FACTS

1. Lime Rock Race Track and Court Orders regulating same.

The racing of motor vehicles has been taking place on the property in the Lime Rock area of Salisbury that is now owned by the plaintiff ("the property") since 1957. The property is located in what is now the Rural Enterprise ("RE") zoning district and is surrounded by residential dwellings. RR 14, Ex. 3 (affidavit certifying that 167 residential houses were located within 1.5 miles from the center of the property). A few nonresidential properties, including a church and a cemetery, are also in the vicinity. Id. (copies of assessor's maps of surrounding properties).

In 1958, the owners of the surrounding properties brought an injunction action against the race track owner, alleging irreparable harm and nuisance based on race track operations.

Adams v. Vaill, I.L.I-CV58-0015459-S (J.D. Litchfield). See also, Adams v. Vaill, 158 Conn.

478, 480 (1969). The trial court found for the plaintiffs, and, by Order dated May 12, 1959, issued an order restricting motor vehicle racing on the track to certain parameters: all activity was prohibited on Sundays, and the hours limitations for other activities were set forth depending on whether the engines were mufflered or unmufflered. RR 10-17 (copy of 1959 Order attached to Motion by Lime Rock Park LLC in Adams v. Vaill). The original 1959 Order has been modified, with the most recent modification approved by the Court on March 21, 1988. Id. (copy of 1988 Modification to Order).

At the public hearings on the zoning amendments, there was testimony from the public as to how those residing in the vicinity of the race track had relied on the existing court orders. See, e.g., RR 21, Tr. 9/8/15, pp. 40-41 (owner of three properties in the vicinity of race track testifies that he reviewed injunction and relied on it when he purchased the properties); Id., pp. 57-58 (real estate broker who has sold real estate for 40 years informed potential buyers of property in the vicinity of the track of the injunction language); Id., p. 43 (neighbor reads letter from Lime Rock Citizen's Council stating that injunction has provided protections for residents of Lime Rock "that we have relied on for years to ensure that we may enjoy some peaceful use of our property and our neighborhood"); see also. RR 10-22A; RR 22, Tr. 10/19/16, pp. 88-89 (adjacent property owner states that neighbors bought properties knowing that there were restrictions on Sunday racing, unmufflered racing, camping, and hours of operation).

A second series of court decisions affecting the use of the race track property were the decisions in certain consolidated zoning appeals. RR 10-18 (Motion to Modify Order in Lime Rock Foundation. Inc. v. Zoning Board of Appeals, LLI-CV77-0016404-S and companion cases). Unlike the injunction action issued in Adams v. Vaill, which arose out of a private nuisance action, these zoning appeals concerned rights under zoning law: specifically the extent to which camping-related activities are allowed on the property either under the Regulations then in effect or by virtue of the race track's status as a nonconforming use. The Zoning Enforcement Officer, after consultation with the Commission, issued an order addressing these issues, and the race track owner appealed that order to the Salisbury Zoning Board of Appeals (ZBA) pursuant to Gen. Stat. § 8-6. The ZBA issued a decision which was then appealed by both the race track owner and aggrieved neighbors to Superior Court. Thereafter, the court entered judgments

following stipulations among the parties setting forth parameters under which camping-related activities are allowed on the property.

2. Zoning Regulations addressing motor vehicle racing in the Town of Salisbury.

In 1955, pursuant to what is now Gen. Stat. § 8-1, the Town of Salisbury ("Town") by ordinance, voted to create a zoning commission to exercise the powers authorized by what is now Chapter 124 of the General Statutes. See Ordinance #8 in Ex. B attached hereto. The initial zoning regulations, adopted on June 8, 1959, divided the Town into various districts, including the RE District. The RE District authorized a variety of residential and commercial uses, and contained specific regulations authorizing a track for racing motor vehicles subject to specific regulations. RR 16-843. The initial regulations addressed hours of operation, and provided that "No races shall be conducted on any such track except during such hours as are permitted by Statute."

The Commission amended the Zoning Regulations on various occasions after the regulations were adopted in 1959. See RR 16-841 (2008 Regulations noting 20 revisions as of March 18, 2008). The regulations in effect on July 1, 1985 for the RE District specified permitted uses (mainly residential and agricultural uses) and special permit uses (mainly commercial and industrial uses). RR 16-839. In the 1985 Regulations, a track for racing motor vehicles was allowed in the RE District as a special permit use, and the regulations specifically provided that "No races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59". Id., Section 415.1 of 1985 Regulations.

The 1959 regulations authorized a track for racing motor vehicles, but specifically excluded the racing of motorcycles. The regulations required certain buffers when abutting a residential zoning district, addressed the location of access and intersections, authorized traffic control measures, required adequate off-street parking, limited the number of signs allowed, and prohibited illuminated signs.

Since 1985, the Zoning Regulations have been amended further at various times, but at all times the regulations limited the racing hours of operation to those referenced in a "court order." See RR 16-840, 16-841 (2004 & 2008 Regulations contain identical language as the 1985 Regulations, i.e., "No races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59"). The regulations effective as of May 26, 2013, which were in effect prior to the current amendments that are the subject of this appeal, provided: "No races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." RR 29, § 221,2.a.

Beginning in at least 2004, the Zoning Regulations contained a separate Table of Uses setting forth which uses are allowed as of right and by special permit in the various districts. The Table of Uses in the 2004 Regulations did not list a track for racing motor vehicles as a use allowed in the RE (or any other) District. RR 16-840. The Table of Uses for the 2008 Regulations, however, did provide that a track for racing motor vehicles was allowed by special permit in the RE District. RR 16-841. The 2013 Regulations, however, again omitted "a track for racing motor vehicles" from the Table of Uses as a use allowed in any zoning district. RR 29, Table 205.2.²

3. The 2015 Zoning Amendments

For a period of time up to and including July 2015, the Commission held a series of public meetings at which it reviewed the zoning regulation governing motor vehicle racing

Accordingly, the failure to list a track for racing motor vehicles as a permitted or special use in the Table of Uses means that the use was prohibited. See Gada v. Zoning Board of Appeals, 151 Conn. 46 (1963).

² Section 102.a. of the Regulations provides:

Uses Not Permitted are Prohibited. The uses of land, buildings or structures that are not allowed as a permitted use or Special Permit use or otherwise allowed in the various zones or overlay districts are prohibited.

activities in the RE District. RR 1. Following those meetings and other meetings with representatives of the Lime Rock Race Track and neighborhood, the Commission proposed certain amendments to its regulations governing motor vehicle race tracks in the RE District. RR 2 (proposed amendments). As set forth in a memorandum from the Commission Chairman, Michael Klemens, to Commission members, the purpose of the amendments was to "balance competing interests over the LRP [Lime Rock Park] operations as well as to bring much-needed clarity to the relationship between the series of court-order[ed] stipulations entered into by the LRP and its neighbors and our regulations." RR 1.

The proposed amendments added the following:

- A clarification and expansion of a list of various uses that have been determined to be incidental and accessory to a race track use. The following new uses were explicitly listed as permitted when incidental and accessory to the operation of the race track: retail stores, professional or business offices, fire or emergency vehicles, ATMs, restaurants, sale of motor vehicles during racing events, car washes, auto service and repairs, filling stations, commercial parking, laundry, equipment storage, racing schools and clubs, and indoor theaters. Compare new Regulation Sec. 221.2 (RR 20) with existing Regulation Sec. 221.2.g (RR 29).
- An amendment to the Table of Uses specifying that a "Track for Racing Motor Vehicles" is a use allowed by special permit in the RE District. See addition to Section 205.2 (Table of Uses) and 205.3 (Table of Accessory Uses).
- The inclusion of a definition of "motor vehicle" taken from the Connecticut General Statutes. This was intended to resolve ambiguities such as whether gokart racing was allowed. RR 1.
- The incorporation into the regulations of the specific parameters of the most recent injunction order limiting hours of operation in the <u>Vaill</u> action instead of simply referencing an unnamed and unidentified "court order" and "subsequent related court orders on file". <u>Compare</u> existing regulation Sec. 221.2.a. with new Sec. 221.1.a. <u>See</u> Exhibit A attached hereto. The new regulation spells out the content of the most recent, operative court order addressing the hours of operation of various permissible track activities, so that a person reviewing the regulations would know what those parameters are without having to locate the outside documents constituting the "subsequent related court orders on file" and identify which "court order" was operative. It also precludes the possibility that the zoning regulations could be deemed to be amended without a public hearing or any

other due process – simply by an amendment to the <u>Vail!</u> judgment (to which the Commission is not a party) that happened to be placed in the file of the Zoning or Town Clerk's office.

- The addition of an accessory use allowing camping-related activities consistent with the parameters set forth in the <u>Lime Rock Foundation</u> ZBA appeals. <u>See</u> new Section 221.3. The stipulated judgments in those appeals govern existing camping-related operations on the race track even though the existing regulations were silent as to what was and was not allowed as a permissible camping activity. Accordingly, this new section codifies these parameters, thereby allowing current and prospective property owners to be aware of those parameters by reviewing the zoning regulations without having to locate the court judgments.
- Another section provided that certain temporary uses would be allowed by special
 permit even though they were deemed not to be incidental or accessory to a race
 track. These uses included fireworks displays, concerts, flea markets, craft fairs,
 food shows, non-automotive trade shows and garden shows. See new
 Section 221.4. This regulation thus expanded the uses allowed on a race rrack
 property.

The Commission held a public hearing on September 8, 2015 and October 19, 2015.

RR 21 and 22 (Transcripts). The Commission heard comments both in support and in opposition to the proposed amendments and also received numerous letters and emails both in favor and in opposition. RR 10, 16.

The Commission deliberated on the proposed amendments at its meeting of November 16, 2016. RR 23 (Transcript of deliberations). The Commission elected to make certain modifications to the amendments based on comments made at the public hearing. See RR 17. The Commission approved the modified amendments by a vote of 4 to 1. RR 23, p. 77. The Commission provided the following statement of reasons for approving the amendments:³

The Salisbury Planning & Zoning Commission votes to approve the proposed amendments adding Section 221.1, et seq. (TRACK FOR RACING MOTOR VEHICLES), as amended, in lieu of the existing 221.2, and adding a definition of a "Motor Vehicle" to the definition section, and amending Tables 205.2 and 205.3, in accordance with the following findings and reasons:

³ Gen. Stat. § 8-3(c) provides in part: "Whenever such commission makes any change in a regulation or boundary it shall state upon its records the reason why such change is made."

- 1. The Amendments at Sections 221.1 and 221.3 set forth restrictions that are *already* part of the Town's zoning scheme. Setting forth the standards in the regulations themselves allows the affected property owners to know what the zoning restrictions are without having to review outside documents.
 - The parameters set forth in subsection 221.1.a are taken from the Amended Stipulated Judgment entered on March 21, 1988 in the civil action, Ann Adams. et al. v. B. Franklin Vaill. et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield) (the "Vaill action"). This action is the "Court Order" incorporated at Section 221.2.a of the existing regulations, and is the most recent order agreed to by the parties in that action. Since at least 1985, the zoning regulations have incorporated the restrictions contained in this court action.
 - The restrictions on camping set forth in section 221.3 are based on the stipulated judgment dated September 19, 1979 in <u>Lime Rock Foundation</u>. <u>Inc. v. Zoning Board of Appeals of the Town of Salisbury</u>, No. 16,4046 (Judicial District of Litchfield) (the "<u>ZBA</u> action"). That action arose out of a cease and desist order issued by the Zoning Enforcement Officer that was appealed to the Zoning Board of Appeals. The court judgment established the permissible limits of camping in light of the zoning regulations and the current race track's nonconforming status.
- 2. We recognize that the Vaill action has established parameters for the existing race track operations that have been in effect, in one form or other, since 1959, while the ZBA action has established the standards regarding camping use since 1979. Insofar as zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use, it is reasonable to incorporate those restrictions on land use within the zoning regulations themselves. We nonetheless recognize that the Vaill action is based on private nuisance law, while the authority of the Planning & Zoning Commission derives from the delegated authority to regulate land use set forth by Chapter 124 of the General Statutes. We also recognize the Planning & Zoning Commission is not a party to Vaill action and that the actual parties to the Vaill action may, or may not, be reflective of those property owners affected by the race track's use of the area. By setting forth the most recent standards in the Vaill action and ZBA action in the regulations themselves, we clarify the exact standards that are the present "status quo" and that have shaped the conduct and reasonable expectation of affected property owners for decades. We also eliminate the possibility that the zoning regulations could be deemed to be amended if there were to be an amendment to a court judgment in the Vaill action.

At the same time, articulating the current restrictions within the regulations themselves provide a foundation where those expectations can, if appropriate, be changed -- specifically, by the permitting and amendment process set forth in the regulations. It may, in fact, be the case that conditions have changed so that

modifications from the <u>Vaill</u> or <u>ZBA</u> standards may be warranted either in a more or less restrictive fashion, or both. We believe that utilization of the current permitting and amendment process, which requires notice and public hearings, will allow affected property owners the opportunity to make changes, where appropriate, apart from whether those changes do or do not coincide with what has been approved in private civil litigation.

- 3. The proposed amendments also clarify what uses should properly be deemed to be Accessory Uses to a Race Track, and what uses do not fall into that category. This has been a historical "gray area" over the years, and the regulations attempt to provide greater certainty so affected property owners will know in advance what is allowed and what is not allowed as an accessory use. Similarly, the addition of a definition of "Motor Vehicle" (taken from State statute) provides clarity as to what vehicles are covered by the regulations.
- 4. The proposed amendments also support public health & safety and preserve property values. While it has been alleged that the restrictions in the proposed Section 221.1a (which have existed in some form since at least 1985) are an unauthorized attempt to regulate noise, we disagree. Section 221.1a, as well as the remaining sections, comprise our efforts to regulate a particular use (a track for racing of motor vehicles), that, by its very nature, may have substantial impacts on surrounding properties. Those impacts include not only noise, but traffic (including volume, the size of vehicles travelling on narrow streets, and congestion), nighttime illumination, air quality, and changes to property values.
- 5. We find that it is appropriate to amend the table of uses to list a "track for racing motor vehicles" as permitted by Special Permit in the RE District. The current regulations do <u>not</u> list this as a use allowed in any district, and thus, the present regulations could reasonably be read as prohibiting this use. We recognize, however, that our regulations have permitted the racing of motor vehicles as a specially permitted use in the RE district in the past, and believe that the use was inadvertently omitted from the Table of Uses in the 2013 zoning revisions.
- 6. The Commission has made certain revisions to the proposed amendments in response to comments and testimony at the public hearing, which changes are within the scope of the advertised legal notice. Those revisions include adding a Section 221.5 (clarifying that the restrictions of the regulations and conditions of any special permit apply when any holder of a special permit leases all or part of its property to third parties), and Section 221.6. (A statement of the Commission's intent as to how the regulations should be interpreted if any part of Section 221.1 is found to be illegal; this has been inserted in light of claims that parts of the existing regulations and proposed amendments may be illegal.)
- We find that the proposed amendments are consistent with the Town of Salisbury 2012 Plan of Conservation and Development for the reasons set forth by Mr. Martin Connor, AICP, in his oral and written testimony to the Commission.

The effective date of these amendments shall be December 1, 2015.
 RR 19; RR 23, pp. 70-75. The plaintiff thereafter filed this appeal.⁴

II. AGGRIEVEMENT

Aggrievement is a prerequisite to maintaining a zoning appeal, and the plaintiff bears the burden of proof that it is aggrieved by the Commission's decision. Hendel's Investors

Company v. Zoning Board of Appeals, 62 Conn. App. 263, 271 (2001). Aggrievement is a jurisdictional question. Winchester Woods Associates v. Planning & Zoning Commission,

219 Conn. 303, 307 (1991). Unless the plaintiff alleges and proves aggrievement, the case must be dismissed for lack of subject matter of jurisdiction. Fuller v. Planning & Zoning Commission,

21 Conn. App. 340, 343 (1990).

The Commission leaves the plaintiff to its proof on the issue of aggrievement.

III. ARGUMENT

1. The Commission's authority to adopt a zoning regulation addressing the hours of operation of race tracks is not preempted by Gen. Stat. § 14-164a.

The plaintiff claims that Section 221.1.a of the amended regulations, and presumably the previous zoning regulations explicitly incorporating the hours of operation of the <u>Vaill</u> injunction, are preempted by Gen. Stat. Sec. 14-164a⁵, and therefore invalid. This claim is

In its initial appeal papers, the plaintiff challenged the Commission's adoption of Section 221.6, a severability clause adopted by the Commission that provided a statement of intent as to how the regulations should be interpreted in the event that some subsection of the regulations were found to be invalid. While the legal notice describing the proposed amendments was broadly worded, it was acknowledged that the specific language in Section 221.6 was not included in the draft regulations prior to the public hearing. RR 30. Accordingly, the Commission elected to hold a public hearing on the proposed re-adoption of this section, after which it would readopt, modify, or repeal this section. The Commission held a public hearing on March 30, 2016, after which the Commission elected to repeal Section 221.6. RR 34, 35. Accordingly, the validity of the severability provision in the former Section 221.6 is no longer an issue in this appeal.

⁵ Gen Stat. § 14-164a provides in part:

⁽a) No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after

incorrect because (1) the legislature has not "occupied the field" with respect to the regulation of motor vehicle race tracks; and (2) the regulation does not irreconcilably conflict with state law because the legislature has authorized aspects of race track use and operations to be regulated both by a Town's legislative body and by the Town's Zoning Commission; and (3) there is no indication that the legislature intended that the Town's legislative body to be the <u>exclusive</u> local agency to regulate hours of operation of a race track.

A. The Legislature has not occupied the field with respect to the regulation of Motor Vehicle Race Tracks.

A local law is preempted by state statute "whenever the legislature has demonstrated an intent to occupy the entire field of regulation on the matter...." Town of Rocky Hill v.

Securecare Realty, LLC, 315 Conn. 265, 295 (2015)(citation omitted). An issue in "occupy the field" cases is "whether the state has adopted a regulatory scheme concerning a subject that is so comprehensive that any gaps in the regulatory network are deemed to be deliberate omissions."

T. Tondro, Connecticut Land Use Regulation (2d ed. 1992) p. 364. Gen. Stat. § 14-164a does not occupy the field of race car regulation.

An example where a court has found a local regulation preempted under an "occupy the field" analysis is Manchester Sand & Gravel Co., Inc. v. Town of South Windsor, 203 Conn.

267, 276-77 (1987)(State Traffic Commission has exclusive jurisdiction to regulate through truck

twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances. The person conducting such race or exhibition shall provide for first-aid and medical supplies and equipment, including ambulances, and the attendance of doctors or other persons qualified to give emergency medical aid, police and fire protection, and such other requirements as will eliminate any unusual hazard to participants in such race or exhibition or to the spectators. Smoking or carrying a lighted smoking implement shall be prohibited in any area where fuel is stored or transferred. Each facility, other than a motor cross racing facility, where racing is conducted shall contain restricted areas which shall be posted with notice that only persons with the appropriate credentials may be admitted to such restricted areas. Areas of the facility subject to this requirement shall include, but need not be limited to, the pit area and pit lane, track, media area or areas and any other area that is unprotected from participating vehicles.

traffic because town ordinance would be inconsistent with Gen. Stat. § 14-298 which vests that power in State Traffic Commission). Compare Town of Rocky Hill v. Securecare Realty, LLC, supra, 294-99 (Gen. Stat. Sec. 17b-372, allowing the state to contract with private entities to provide nursing home services to state prisoners and others in state custody does not preempt local zoning regulations covering this use); Bauer v. Waste Management, 234 Conn. 221, 232-34 (1995)(Gen. Stat. § 22a-208a(b) does not preempt the entire field of solid waste regulation because the statute allows for local regulation); Berlin Batting Cages, Inc. v. Planning & Zoning Commission, 76 Conn. App. 199 (2003)(statutory scheme setting forth how noise decibel levels may be regulated consistent with state standards via local ordinance that must be approved by Commissioner of Environmental Protection sets forth comprehensive scheme of noise regulation and preempts zoning regulation of noise decibel levels).

Here, the plaintiff has not claimed that Gen. Stat. § 14-164a occupies the field of race driving. ⁶ Nor could it reasonably make such a claim. The statute does not establish a comprehensive legislative scheme over all aspects of the race track's activities. Indeed, as the plaintiff itself demonstrated by setting forth how the statute has been modified over the years, the statute has been amended to *decrease* involvement of the Commissioner of Motor Vehicles, as the 2004 amendment explicitly eliminated all permitting responsibilities of the Commissioner from the statute. Moreover, the statute authorizes the Commissioner of Motor Vehicles to adopt regulations only with respect to "mandatory safety equipment for vehicles that participate in any race or exhibition conducted in accordance with the provisions of this section"; Sec. 14-164a(c); and virtually all of the regulations that had been adopted pursuant Gen Stat. Sec. 14-164a have

⁶ The plaintiff does not claim, for example, that the Commission has no power to adopt any type of zoning regulations addressing a track for racing motor vehicles.

been repealed.⁷ Moreover, the statute on its face authorizes local involvement by including the proviso that "no such race or exhibition shall take place contrary to the provisions of any city, borough, or town ordinances."

Accordingly, Gen. Stat. § 14-164a does not occupy the field of race car regulation, and the Town's Zoning Regulations are not preempted for this reason.

B. The Town's Zoning Regulation addressing the hours of operation does not irreconcilably conflict with State law.

A local regulation may also be preempted by statute if the regulation irreconcilably conflicts with state law. As stated by the court in <u>Modern Cigarette. Inc. v. Town of Orange.</u>
256 Conn. 105, 119 (2001):

Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives....Therefore, [t]hat a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through the enactment of an ordinance, so long as there is no conflict with the state legislation.... Where the state legislature has delegated to local government the right to deal with a particular field of regulation, the fact that a statute also regulates the same subject in less than full fashion does not, ipso facto, deprive the local government of the power to act in a more comprehensive, but not inconsistent, manner.

(citation and quotations omitted; brackets in original).

The zoning regulation regulating days and hours of track for racing motor vehicles does not irreconcilably conflict with state law because the legislature has authorized the Town to regulate hours of operation of race track activities both through its legislative body and through

⁷ The regulations enacted pursuant to Gen. Stat. § 14-164a were formerly set forth at Regs. Conn. State Agencies §§ 14-164a-1 through 14-164a-17. Effective October 1, 2005, all of these regulations were repealed except § 14-164a-1 (which simply describes the chapter), § 14-164a-9 (requiring the person conducting the race or exhibition to be responsible for a safety inspection of vehicles), and § 14-164a-10 (requiring the person conducting the race or exhibition to advise participants of certain safety rules).

As noted infra, the plaintiff incorrectly states that this proviso concerns only the authority of towns to expand permissible racing hours on Sunday mornings.

its zoning commission. While the hours limitations in the second sentence of Gen Stat. § 14-164a acts as a "default" time limitation on race track events in the event that a town does *not* adopt further restrictions, the legislature has authorized towns to regulate hours and days of operation both through legislative body (via Gen. Stat. § 14-164a) and through land use authority granted to zoning commissions (via Gen. Stat. § 8-2). Nowhere in the statutory scheme did the legislature state that one grant was the exclusive means by which racing activities could be regulated. In addition, under Gen. Stat. § 8-13, the legislature has stated that where the standards in the zoning regulations are stricter than the standards imposed by any other statute or ordinance, the standards in the zoning regulations shall prevail. Accordingly, the zoning regulation hereto does not irreconcilably conflict with state law.

(1) Section 14-164a authorizes a town to regulate the hours and days of racing events and that authority is not limited to expanding Sunday race times.

Gen. Stat. § 14-164a specifically authorizes municipal regulation of hours and days of race track operations by including the proviso that "no such race or exhibition shall take place contrary to the provisions of any city, borough, or town ordinances." This proviso, specifically included after the sentences addressing time limits of racing activities, specifically authorizes towns to regulate the days and hours of operations of race tracks as an alternative to the restrictions set forth in the statute.

While the plaintiff acknowledges that Section 14-164a authorizes some degree of local control of when race track activities may take place, it argues that the authority is limited to the right to expand the hours of operation into Sunday morning. This interpretation is unsupported by either the language or the intent of the statute.

The issue is what is the proper referent of "such race or exhibition" in the third sentence of subsection (a) of Section 14-164a. The phrase "such race or exhibition" is used throughout this subsection:

(a) No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city. borough or town ordinances. The person conducting such race or exhibition shall provide for first-aid and medical supplies and equipment, including ambulances, and the attendance of doctors or other persons qualified to give emergency medical aid, police and fire protection, and such other requirements as will eliminate any unusual hazard to participants in such race or exhibition or to the spectators. Smoking or carrying a lighted smoking implement shall be prohibited in any area where fuel is stored or transferred. Each facility, other than a motor cross racing facility, where racing is conducted shall contain restricted areas which shall be posted with notice that only persons with the appropriate credentials may be admitted to such restricted. areas. Areas of the facility subject to this requirement shall include, but need not be limited to, the pit area and pit lane, track, media area or areas and any other area that is unprotected from participating vehicles.

(emphasis added).

The plaintiff argues that the proviso that "no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances" in the third sentence limits only the town's right described earlier in that sentence, i.e., the right of the legislative body to issue a permit to allow a starting time before noon. An examination of the statute demonstrates, however, that the phrase "such race or exhibition" is used repeatedly to refer to all the races and exhibitions described in the first sentence of the Act. "The accepted dictionary definitions of 'such' include 'having a quality already or just specified,' 'previously characterized or

specified, and 'aforementioned.' Webster, Third New International Dictionary". Great Atlantic Pacific & Tea Co. v. Katona. 151 Conn. 417, 420 (1964). Accordingly, the phrase "such race or exhibition" in the third sentence must refer to the "race or exhibition" previously described in the first sentence, i.e., "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition." Thus, the language "no such race or exhibition shall take place contrary to the provisions of any city, borough, or town ordinances" clearly refers to all races or exhibitions covered by the statute.

The legislative history, such as it is, also supports this interpretation. The plaintiff, in its brief, has set forth how Gen. Stat. § 14-164a has been amended over time. The statute was adopted in 1930, and the 1930 version of the statute did not address hours or days of operation at all. Beginning in 1939, the statute addressed days and hours of operation – but the 1939 statute, and all subsequent versions of that statute up to and including the present, have included the following proviso after setting forth otherwise permissible operating times: "no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances". Accordingly, it is evident that once the legislature began addressing permissible racing times, it explicitly acknowledged a municipality's right to regulate the days and hours of operation apart from the limitations set forth in the statute.

The plaintiff seems to argue that, because of certain changes in punctuation over the years (particularly 1998), the legislature has divested towns of the right to regulate days and hours of operation in general, and limited that right to preventing races from starting before noon on Sunday. The plaintiff has cited nothing from any legislative history to suggest that the legislature intended such a drastic change in the authority of towns to regulate race track hours and days of operation. Given that hours of operation is a matter of particularly local concern and

is not a matter of statewide interest where a uniform standard may be merited (such as the safety issues otherwise addressed in the statute), it would be highly unusual if the legislature intended to effectuate, *sub silento*, such a drastic divestment of local authority without at least some acknowledgment of this fact in legislative sessions or committee public hearings. "Although punctuation is an aid to statutory construction, punctuation may be disregarded when it leads to results inconsistent with the apparent intent of the legislature." Soares v. Max Services. Inc., 42 Conn. App. 147, 161, cert. denied, 239 Conn. 915 (1996). See also, Mimms v. Planning & Zoning Commission, 1993 WL 213723 *10-11(1993).

Moreover, "[w]here the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the qualifying word or phrase will not be restricted to its immediate antecedent." <u>Bateson v. Weddle</u>, 306 Conn. 1, 17 (2012) quoting <u>State v. Rodriguez-Roman</u>, 297 Conn. 66, 76 n.7 (2010). Accordingly, there is no merit to the plaintiff's claim that the proviso, "no such race or exhibition shall take place contrary to the provisions of any city, borough, or town ordinances" in the statute limits only the right of the legislative body to allow racing before noon on Sunday. Instead, this language authorizes towns to regulate hours and days of operation notwithstanding the restrictions already contained in the statute.

In Mimms, the court, Levin, J, rejected a claim similar to that made by the plaintiff here. The plaintiff claimed, inter alia, that a proposed composting facility involved a "regulated activity" as that term is defined in the local wetland regulations, and that the punctuation contained in the definition of "regulated activity" provided two separate definitions of the term "regulated activity". The court rejected the claim for a number of reasons, including the fact that (1) the interpretation would sequester the exemptions listed at the end of the section, so that the exemptions would apply only to one of two definitions, which would not comport with the spirit of the regulations [similar to how the plaintiff's interpretation here would isolate the proviso recognizing municipal authority to regulate race track activities and severely limit its scope]; (2) the plaintiff's interpretation ignored the fact that the second part of the definition of regulated activity referred to "such" wetlands which referred back to the earlier section [just as the reference to "such race or exhibition" in the third sentence here refers back to the races and exhibitions described at the beginning of 14-164a]; and (3) "punctuation is seldom a highly persuasive factor in statutory construction and will not defeat evident legislative intent" (citation omitted).

The plaintiff may also claim that, even if the proviso authorizes towns to address hours and days of operation, the restriction must be by ordinance and not a zoning regulation. This argument ignores the fact that the authority for the Commission to adopt zoning regulations addressing this issue does not derive from Gen. Stat. § 14-164a but from Gen. Stat. § 8-2, which provides independent authority for the adoption of such regulations. See discussion infra. Thus, even if the proviso in § 14-164a refers only to municipal ordinances, that fact does not restrict the independent authority of a town to adopt zoning regulations pursuant to Gen. Stat. § 8-2 that address land uses, including a "track for racing motor vehicles", which may address operating hours.

This argument also ignores the fact that the Salisbury Planning and Zoning Commission was created by ordinance. See copy of ordinance creating Planning & Zoning Commission to exercise zoning authority attached at Exhibit B. Accordingly, the phrase "contrary to the provisions of any ... town ordinance" can be reasonably interpreted to encompass regulations adopted pursuant to an ordinance adopted by the town's legislative body. In addition, the Court can take notice of the fact that zoning regulations are frequently referred to as ordinances in both case law and statute. See, e.g., Doven v. Zoning Board of Appeals, 67 Conn. App. 597, 604 cert. denied, 260 Conn. 901 (2002)("A zoning ordinance is a local legislative enactment. . .");

Olsen v. Zoning Board of Appeals, 5 Conn. App. 455, 457 (1985)(referring to zoning regulations as "municipal ordinances"); Gen. Stat. § 30-44 ("The Department of Consumer Protection shall refuse permits for the sale of alcoholic liquor ... where prohibited by the zoning ordinance of any city or town.") (emphasis added). Accordingly, the zoning amendments adopted here were

¹⁰ The court may take judicial notice of municipal ordinances. Gen. Stat. § 52-163. The attachment at Exhibit B contains the first six pages of the Salisbury Ordinances. The Ordinance creating the Planning & Zoning Commission is Ordinance No. 8.

also adopted pursuant to the authority created by municipal ordinance and were thus within the ambit of Gen. Stat. § 14-164a.

(2) The Legislature has authorized a town's zoning commission to regulate race track uses, including hours and days of operation, through Gen. Stat. § 8-2.

The state has delegated to towns the authority to regulate land use by the creation of a zoning commission that may exercise the powers granted under Chapter 124 of the General Statutes. Gen. Stat. § 8-2 provides a broad grant of police power authority to regulate the use of land. The Town of Salisbury has, by ordinance, exercised this grant of authority by creating a zoning commission to exercise the powers granted therein through the adoption of zoning regulations. The Zoning Commission has adopted zoning regulations, and, within the regulations, a "track for racing motor vehicles" has been among the specific land uses regulated in the Town since regulations were first adopted in 1959.

The plaintiff does not dispute that the Commission may, consistent with its authority to regulate land use, enact regulations authorizing temporal limits on particular uses. Zoning regulations often specify time limits on uses and activities, particularly those that may present

¹¹ Gen Stat. § 8-2 provides in part:

⁽a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality ... the location and use of buildings, structures and land for trade, industry, residence or other purposes Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter, and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations ... may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a ... planning and zoning commission ... subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values..... Such regulations shall be designed to lessen congestion in the streets; ... to promote health and the general welfare;.... Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality....

nuisance issues, such as earth removal or filling operations. See, e.g., Corvalis Homes, LLC v. Zoning Commission of Naugatuck, 2006 WL 1319956 *7 (referencing zoning regulations providing that "The hours of operation for rock or stone crushers, drilling and washing shall be Monday through Friday, 8:00 AM to 4:00 PM" and "No earth, excavation, fill, grading or processing activities shall take place after 5:00 PM or before 8:00 AM"); Renz v. Planning & Zoning Commission, 1992 WL 369634 *11 (court upholds condition preventing excavation activities on Sunday and legal holidays because condition conformed with time standards in regulations limiting operations to Monday through Saturday); Aiken v. Killingly Planning & Zoning, 2003 WL 22080504 *3 (zoning regulation provides "The Commission may further limit the number of operating hours, should it determine that operations will be conducted in such proximity to neighboring homes so as to deprive the occupants of the enjoyment of the property during evening hours"). Our Supreme and Appellate courts have specifically upheld the enforcement of temporal "seasonal use" restrictions in a number of cases. Francini v. Zoning Board of Appeals, 228 Conn. 785, 793-94 (1994); Cummings v. Tripp, 204 Conn. 67, 84-86 (1987); Beerwort v. Zoning Board of Appeals of Coventry, 144 Conn. 731 (1958); Woodbury Donuts, LLC v. Zoning Board of Appeals of Woodbury, 139 Conn. App. 748, 764 (2012). See also, Shulman v. Zoning Board of Appeals, 154 Conn. 426 (1967) (referencing zoning regulation authorizing board to limit hours of operation on special exception, but finding that doing so was within board's discretion); City of New Haven v. G.L. Capasso, Inc., 151 Conn. App. 368, 371-72 (2014)(New Haven Board of Zoning Appeals had authority to impose an "hours of access" condition on a special exception when it affirmed an enforcement action against a property owner who violated such a condition). Temporal limitations are particularly appropriate in special permit situations, where the use is not allowed as of right, but only if compatible with the neighborhood, and where Gen. Stat. § 8-2 specifically provides that special permits must be "subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values." See text and footnote 22 infra. Accordingly, the Commission here had authority, pursuant to the police power authority set forth in Gen. Stat. § 8-2, to adopt regulations setting forth temporal restrictions governing a track for racing motor vehicles.

While the plaintiff has not claimed that the Commission lacks authority under Gen. Stat. § 8-2 to adopt regulations restricting its hours and days of operation, it does claim that § 14-164a has usurped the right of the Commission to adopt such regulations. This argument ignores the fact that the legislature can grant the power to regulate to more than one local authority, as it has done here. As stated by the court in Smith v. Zoning Board of Appeals, 227 Conn. 71, 96 (1993), cert. denied, 510 U.S. 1164 (1994): "Absent a statutory provision designating which commission is to have overriding responsibility, [however,] the fact that the legislature has given responsibility to more than one agency suggests that each must exercise its own authority, using its standards and procedures, regardless of what the other agencies do under their delegation of power from the state." (quoting T. Tondro, Connecticut Land Use Regulation, p. 50 (2d ed. 1992) (brackets in original). In Smith, the court ruled that an historic district commission did not exercise exclusive statutory jurisdiction to rule on changes affecting the historic character of an historic district, and that a planning and zoning commission could also consider historic factors. Id. See also, VIP of Berlin, LLC v. Town of Berlin, 287 Conn. 142 (2008)(town can regulate location of adult uses both by ordinance adopted pursuant to Gen. Stat. § 7-148 and by zoning regulation).

Here, the Commission has chosen to allow, and regulate, "a track for racing motor vehicles" and has regulated the days and hours of racing activities as part of that regulation. The Commission's authority to adopt the regulation here does not derive from § 14-164a but from its authority to regulate land use set forth Gen. Stat. § 8-2. Nothing in Section 14-164a states that the legislative body is the *exclusive* local body to regulate days and hours of operation of race tracks. When the legislature intends to restrict a local agency from regulating on a subject matter, it does so explicitly. See, e.g., Gen. Stat. § 22a-124(a)¹²; Gen. Stat. § 16-202¹³; See also, Modern Cigarette, Inc. v. Town of Orange, 256 Conn. 105, 132 (2001)(municipal ordinance prohibiting cigarette vending machines in town not preempted by statute limiting such machines to specific locations; noting that if legislature had wanted to preempt the town from enacting such an ordinance, it could have done so explicitly, and pointing out statute where legislature *did* explicitly preempt certain municipal ordinances with respect to smoking in public buildings).

The legislature has explicitly addressed situations where both zoning regulations and state statute regulate the same subject matter, and has provided that the enactment with the most stringent regulations should prevail. Gen. Stat. Sec. 8-13 provides in relevant part: "If the regulations made under authority of the provisions of this chapter ... impose other and higher standards than are required in any other statute, ... the provisions of the regulations made under

¹² CGS § 22a-124 provides in part:

⁽a) Notwithstanding any other provision of the general statutes, the [siting]council shall have exclusive jurisdiction over the siting of facilities subject to the provisions of this chapter....

¹³ CGS § 16-202 provides:

Notwithstanding any provision of the general statutes or any municipal zoning ordinance or regulation, except those ordinances or regulations pertaining to the size of signage or flags, a business identified by the Department of Economic and Community Development as being on the Connecticut antiques trail, established pursuant to section 32-6u, may display temporary signage or flags, for not more than sixteen hours each day, indicating that the business is on such trail.

the provisions of this chapter shall govern....¹⁴ Accordingly, pursuant to Gen. Stat. § 8-13, the more stringent provisions of the zoning regulations should prevail over the standard set forth in Section 14-164a.

Moreover, the scope of Gen. Stat. § 14-164a differs from the scope of the zoning regulation adopted by the Commission here. Section 14-164a applies to "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition." The statute, and the regulations adopted thereunder, apply to any individual public race event – regardless of where the event occurs (such as on permanent race track) or how frequently the event may occur. For example, the statute presumably applies to one-time racing events that may occur at agricultural or seasonal fairs. The zoning regulation, in contrast, regulates a "track for racing motor vehicles" as a permanent land use. There could well be instances where a one-time racing event could occur that would be subject to the hours restrictions in Section 14-164a but not be subject to a town's zoning regulations covering race tracks. In addition, Section 14-164a is not limited to motor vehicle racing events but also covers "any ... demonstration of... skill with a motor vehicle as a public exhibition". Accordingly, the hours limitation in the statute presumably cover one-time motor vehicle skill events that may take place in outdoor or indoor arenas that are not

¹⁴ The full text of the statute is a follows:

^{§ 8-13.} Controlling requirement in case of variation

If the regulations made under authority of the provisions of this chapter require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required in any other statute, bylaw, ordinance or regulation, the provisions of the regulations made under the provisions of this chapter shall govern. If the provisions of any other statute, bylaw, ordinance or regulation require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required by the regulations made under authority of the provisions of this chapter, the provisions of such statute, bylaw, ordinance or regulation shall govern.

designed as race tracks (and thus not subject to any zoning regulation covering race tracks). ¹⁵ Finally, regulation by zoning is more limited than regulation by municipal ordinance because zoning regulations, unlike municipal ordinances, cannot be applied to pre-existing uses. <u>See</u> Gen. Stat. § 8-2; T.Tondro, <u>Connecticut Land Use Regulation</u>, <u>supra</u>, p. 53.

The plaintiff may cite <u>Bora v. Zoning Board of Appeals</u>, 161 Conn. 297 (1972), in support of its position. In <u>Bora</u>, the applicant sought a variance of off-street parking regulations to operate a café serving liquor in a building where it had formerly operated a woodworking shop. Both uses were permitted in the zone, and the variance was for off-street parking only. The zoning board of appeals approved the off-street parking variance with the condition that the café limit its hours from 5 p.m. to 1 a.m. The Supreme Court held that the condition was invalid, because the condition exceeded the authority granted to the zoning board of appeals. It pointed out that Gen. Stat. § 30-91 prescribed the hours when liquor outlets may operate, and established a method whereby towns, by ordinance or town meeting could modify the hours. The court held the condition on hours was illegal because the zoning board of appeals had no authority to adopt an hours limitation, and apply it to a single property.

Bora is inapplicable here for a number of reasons. First, Bora addressed only a specific provision of the Liquor Control Act, which contrary to Gen. Stat. § 14-164a, does set forth a comprehensive set of regulations of a particular subject matter (retail and restaurant liquor sales), with specific demarcation as to what is regulated by a local zoning commission and what is regulated by the State Department of Consumer Protection. See, e.g., Conn. Gen. Stat. § 30-44 (Department of Consumer Protection must refuse permits for sale of alcoholic liquor where

¹⁵ For example, the statute presumably covers "monster trucks" spectator events. According to the "monster jam" website, a monster jam event is scheduled for the XL Center in Hartford on February 11 and 12, 2017. http://www.excite.com/events/sports-tickets/Monster-Jam/Monster-Jam-Hartford-CT/index.php. A monster jam event was held in Gillette Stadium in Foxboro, MA on June 26, 2016. http://www.gillettestadium.com/event/detail/2184

prohibited by the zoning ordinance); Sec. 30-52 (specifying when Department of Consumer Protection can override zoning regulations in hardship cases); P.X. Restaurant v. Town of Windsor, 189 Conn. 153 (1983)(town building inspector properly denied building permit for relocation of liquor premises that did not comply with local zoning ordinance). A more analogous case is the more recent VIP of Berlin. LLC v. Town of Berlin. 50 Conn. Sup. 542 (2007), aff'd per curiam. 287 Conn. 142 (2008), where, unlike Bora, the court does review grants of concurrent authority by the legislature to local entities, and there was no independent state agency involved in a comprehensive regulatory scheme.

Second, even if case law concerning the Liquor Control Act has any relevance, <u>Bora</u> concerned the powers of a zoning board of appeals to impose a certain condition on a variance, not the power of a zoning commission to adopt regulations addressing a particular use. As noted above, a zoning commission has authority to adopt such regulations under Gen. Stat. § 8-2, whereas there is nothing specific in Gen. Stat. § 8-6 authorizing a zoning board of appeals to impose conditions relating to hours of liquor sales when granting a parking variance. Third, Gen. Stat. § 8-13, which anticipates overlapping jurisdiction between zoning regulations and state statutes, *does* specifically apply to conflicts between statutes and zoning regulations, but does *not* specifically apply, or in any way mention, conflicts that may occur between statutes and conditions that a zoning board of appeals may impose on a variance. Thus, unlike the statutory scheme reviewed in <u>Bora</u>, there is a specific statute, Gen. Stat. § 8-13, that addresses and authorizes the overlapping jurisdiction at issue here. Fourth, the court in <u>Bora</u> found fault in the fact that the hours limitation was applied to a specific property only rather than throughout the zone. The hours limitation here, however, apply to any track for racing motor vehicles in the zone. Fifth, as noted <u>supra</u>, even if it were to be found that a town must act by ordinance, the

Town of Salisbury has done so here by adopting an ordinance creating the zoning commission, which commission, in turn has adopted the zoning regulations.

Accordingly, the Commission's right to adopt zoning regulations addressing hours of operation of motor vehicle racing as part of its regulation of this land use is authorized under its general police powers set forth in Gen. Stat. § 8-2. The fact that one aspect of this regulation (i.e., the hours of race events) may also be the subject of regulation by municipal ordinance or by the default provisions in Section 14-164a is no impediment to the Commission's adopting its own regulations addressing this use. There are many areas where there is concurrent jurisdiction either between state and local agencies, or among local agencies, and courts will uphold the right of each agency to regulate within its respective authority unless there is a definitive statement that one agency exercises exclusive jurisdiction — and there is no such expression here.

Accordingly, there is no merit to the plaintiff's claim that the Salisbury zoning regulation addressing racing times as part of its regulation of a track for racing motor vehicles irreconcilably conflicts with state law.

2. The Regulations are not illegal noise regulations.

The plaintiff claims that Section 221.1.a is an illegal attempt to regulate noise. This claim entirely lacks merit.

Section 221.1.a does not regulate noise, but prescribes hours of operation for mufflered and unmufflered racing and for other racing related activities. As stated by the Commission:

Section 221.1.a, as well as the remaining sections, comprise our efforts to regulate a particular use (a track for racing of motor vehicles), that, by its very nature, may have substantial impacts on surrounding properties. Those impacts include not only noise, but traffic (including volume, the size of vehicles travelling on narrow streets, and congestion), nighttime illumination, air quality, and changes to property values.

The testimony at the public hearing documented not just noise impacts from race track operations, but issues with traffic congestion, property values, light pollution, and other quality of life issues. See RR 21, Tr. 9/8/16, pp. 42, 49, 62; RR 22, Tr. 10/9/16, pp. 36, 39-40, 52, 53-54, 90-91.

If the regulation was an attempt to regulate noise, it would have established sound levels that could not be exceeded by specific uses. See, e.g., noise regulation contained Regs. Conn.

State Agencies § 22a-69-3.4¹⁶ and § 22a-69-3.5.¹⁷ The regulation here makes no attempt at all to prescribe decibel levels for racing related activities. Cf. Berlin Batting Cages, supra, 215 (zoning regulation that court found to be illegal noise regulation provides: "Noise—Any noise emitted outside the property from which it originates shall comply with the provisions of Sections 22a—69-1 to 22a-69-7.4 of the Regulations of the Connecticut Department of Environmental Protection ('Control of Noise')"). Accordingly, Section 221.1.a is not a noise regulation.

No person shall emit beyond his/her property infrasonic or ultrasonic sound in excess of 100 dB at any time.

(a) No person in a Class C Noise Zone shall emit noise exceeding the levels stated herein and applicable to adjacent Noise Zones:

Receptor

B A/Day A/Night

Class C Emitter to 70 dBA 66 dBA 61 dBA 51 dBA

Levels emitted in excess of the values listed above shall be considered excessive noise.

(b) No person in a Class B Noise Zone shall emit noise exceeding the levels stated herein and applicable to adjacent Noise Zones:

Receptor

C B A/Day A/Night

Class B Emitter to 62 dBA 62 dBA 55 dBA 45 dBA

Levels emitted in excess of the values listed above shall be considered excessive noise.

(c) No person in a Class A Noise Zone shall emit noise exceeding the levels stated herein and applicable to adjacent Noise Zones:

Receptor

C B A/Day A/Night

Class A Emitter to 62 dBA 55 dBA 55 dBA 45 dBA

Levels emitted in excess of the values listed above shall be considered excessive noise.

¹⁶ Sec. 22a-69-3.4. Infrasonic and ultrasonic

¹⁷ Sec. 22a-69-3.5. Noise zone standards

3. The Regulations are supported by the record.

The plaintiff claims that the Commission failed to consider whether the amendments were appropriate. The plaintiff speculates on what the Commission might have been thinking, and then disagrees with those speculations. There is no merit to the plaintiff's claim.¹⁸

It is undisputed that the Commission, acting in its legislative capacity, had broad discretion when amending its zoning regulations. As stated by the Court in Konigsberg v. Board of Aldermen of the City of New Haven, 283 Conn. 553, 582-83 (2007):

This court recently has reiterated that, "[a]cting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change.... The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function.... This legislative discretion is wide and liberal, and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally.... Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment.... The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion.... Within these broad parameters, [t]he test of the [legislative] action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan ... and (2) it must be reasonably related to the normal police power purposes enumerated in [the city's enabling legislation ... In addition, the plaintiffs bear the burden of establishing that the [commission] acted improperly. ... Finally, in our review of the board of aldermen's decision to amend the zoning ordinance, we are mindful that, "[e]very intendment is to be made in favor of the validity of [an] ordinance and it is the duty of the court to sustain the ordinance unless its invalidity is established beyond a reasonable doubt."

(citations omitted; brackets in original.)

¹⁸ The plaintiff has not adequately briefed this issue, as well as the issues raised in subheadings 4, 6, and 7. While the Commission believes that the Court is not obliged to review these claims because of inadequate briefing, the Commission has nonetheless addressed why each of these claims lack merit.

The plaintiff claims that there was a significant difference between the prior regulations and the regulations that were adopted. This contention, even if accurate (which it is not), does not render the regulation illegal. In its statement of reasons, the Commission set forth why it chose to adopt the specific hours of operation for the injunction as part of the regulations. ¹⁹ As set forth in the Commission's reasons for decision:

We recognize that the <u>Vaill</u> action has established parameters for the existing race track operations that have been in effect, in one form or other, since 1959, while the ZBA action has established the standards regarding camping use since 1979. Insofar as zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use, it is reasonable to incorporate those restrictions on land use within the zoning regulations themselves. We nonetheless recognize that the <u>Vaill</u> action is based on private nuisance law, while the authority of the Planning & Zoning Commission derives from the delegated authority to regulate land use set forth by Chapter 124 of the General Statutes. We also recognize the Planning & Zoning Commission is not a party to <u>Vaill</u> action and that the actual parties to the <u>Vaill</u> action may, or may not, be reflective of those property owners affected by the race track's use of the area.

By setting forth the most recent standards in the <u>Vaill</u> action and ZBA action in the regulations themselves, we clarify the exact standards that are the present "status quo" and that have shaped the conduct and reasonable expectation of affected property owners for decades. We also eliminate the possibility that the zoning regulations could be deemed to be amended if there were to be an amendment to a court judgment in the <u>Vaill</u> action.

At the same time, articulating the current restrictions within the regulations themselves provide a foundation where those expectations can, if appropriate, be changed -- specifically, by the permitting and amendment process set forth in the regulations. It may, in fact, be the case that conditions have changed so that modifications from the <u>Vaill</u> or ZBA standards may be warranted either in a more or less restrictive fashion, or both. We believe that utilization of the current permitting and amendment process, which requires notice and public hearings, will allow affected property owners the opportunity to make changes, where appropriate, apart from whether those changes do or do not coincide with what has been approved in private civil litigation.

When the commission sets forth its collective statement of reasons, the court should rely on that collective statement, and not go behind that official statement and attempt to search out and speculate upon other reasons which might have influenced some or all members of the Commission to reach that decision. West Hartford Interfaith Coalition, Inc. v. Town Council, 228 Conn. 498, 515 (1994).

The Commission's decision is fully supported by the record, which confirmed that all the property owners in and around the district – including the plaintiff and members of the intervening defendant – had been abiding by the standards of the most recent injunction since 1988. The Commission also recognized that the zoning amendment process provides a proper community forum for the standards to be amended. The Commission's actions were fully justified given the unique manner in which a track for racing motor vehicles had been conducted and regulated in Salisbury.

Moreover, the amendments also correct the former vagueness and lack of clarity in the regulations. The regulation formerly read "No races shall be conducted on any such track except during such hours as permitted by Court Order dated 5/12/59 and subsequent related Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." That regulation did not identify the "Court Order" or the "subsequent related Court Orders on file" and no person reading the regulations could be certain what those orders were and which ones applied. By setting forth the content of the most recent order, the exact parameters are set forth with certainty.

The plaintiff also argues that the former regulation incorporated only the temporal limits of the court order (i.e., the hours), while the present regulation regulates minutia of track operations. This claim is incorrect; indeed the plaintiff has not even attempted to identify what aspects of the current regulations are <u>not</u> related to time limitations.²⁰ The current regulation, like the prior regulation, sets forth the temporal limits of racing activities.²¹ The present

²⁰ A copy of the text of the prior regulation and of the amended regulation are attached as Exhibit A.

²¹ The plaintiff makes the claim that the prior regulation stating "No races shall be conducted on any such track except during such hours as permitted by Court Order..." allowed Sunday Racing, since the regulation refers to hours, not days, of operation. This claim contradicts the plain language of the regulation. The regulation prohibits all racing except at those hours allowed by the court order. Because the court order did not authorize any "hours" when racing could take place on Sundays, Sunday racing was prohibited. See Gada v. Zoning Board of Appeals, 151

regulation contains 7 sections: Section (1) places temporal limits on Sunday racing activities;
Section (2) sets forth temporal limits for mufflered racing; Section (3) sets forth temporal limits
for unmufflered racing; Section (4) sets forth temporal limits on certain other motor vehicle
activity associated with racing; Section (5) places a temporal limit on the use of loudspeakers;
Section (6) simply defines the term "racing car"; and Section (7) provides that motorcycle racing
is prohibited, which the zoning regulations had already prohibited since zoning was originally
adopted in 1959. Accordingly, the current regulation, like the former regulation, addressed
specific temporal limits of racing related activities. Insofar as there was an ambiguity on what
exactly was covered by the prior regulation, the present regulation has clarified it by spelling out
exactly what is restricted. The new regulation simply sets forth the specific standard that the
plaintiff and surrounding property owners have been abiding by for more than a quarter of
century.

Accordingly, there is no merit to plaintiff's claim that the Commission failed to consider whether the amendments were appropriate.

4. There was a legitimate land use basis for the amendments.

The plaintiff claims that there was no legitimate land use basis for supporting the proposed amendments. The amendments set forth a variety of refinements to the existing regulations governing a track for racing motor vehicles, a use which is allowed only by special permit in the RE District. The amendments were fully in accord with the standards set forth in Gen. Stat. § 8-2.

Conn. 46 (1963) (permissive zoning regulations provide that "[a]ny use which is not specifically permitted is automatically excluded.")

Since at least 1985, a track for racing motor vehicles has been allowed in the RE District only by special permit.²² It is well established that special permit uses require particularized regulation compared to as-of-right uses. As stated by our Supreme Court:

[T]he nature of special exceptions is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site.... We also have recognized that, if not properly planned for, such uses might undermine the residential character of the neighborhood. ... Thus, we have explained that the goal of an application for a special exception is to seek permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district.

A. Aiudi and Sons. LLC v. Planning & Zoning Commission, 267 Conn. 192, 204 (2004) (quotations and citations omitted).

The temporal limits set forth in Section 221.1.a are fully in accord with the authority in Gen. Stat.§ 8-2 to authorize certain uses only by special exception "subject to standards set forth in the regulations", and to specify conditions to mitigate the impact of the use on surrounding properties. Moreover, the parameters in the regulation are reasonable because (1) they had existed in similar form as part of the regulations since 1985; and (2) the particular parameters had governed the track activities on the property since 1988.

Accordingly, there is no merit to the plaintiff's claim that there was no legitimate land use basis to support the amendments.

²² Gen. Stat. § 8-2 specifically authorizes a zoning commission to adopt regulations allowing certain uses only by special permit:

^{...} the regulations ... may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a ... planning and zoning commission ... subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values.

5. The Commission did not exceed its statutory authority in addressing how the standards in the regulation may be amended.

The plaintiff claims that the Commission erred in providing that the hours limitation on race track activities set forth in § 221.1.a and the restrictions on camping operations in § 221.3.d can be amended only by the filing of an application to amend the zoning regulation and an application for a special permit.²³ According to the plaintiff, this requirement illegally limits who may apply to amend these provisions, since only the owner or operator of a race track would be able to file a special permit application. The plaintiff has misread this section.

First, the regulations at issue use the precatory term "may" when describing the amendment process, and do not specify that the methodology described is the exclusive method for amending the zoning regulations. Accordingly, it is incorrect to state that the methodology set forth in the subsection is the only method for amending the regulations.

The reasons for the Commission suggesting this particular method are evident from the record. As stated by the Commission in its reasons for decision, the standards from the injunction and the ZBA appeals have governed track operation for decades, and it is appropriate that these standards be explicitly recited, rather than just referenced, in the regulations.

Nonetheless, the Commission recognized that the standards are not carved in stone, and it may well be appropriate to modify the standards. Because the regulations, since at least 1985, have allowed a track for racing motor vehicles only by special permit, it would be appropriate for a

²³ Section 221, La sets forth hours limitations for various race track activities, and includes at Section 221.1,a 8:

The parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection

A similar provision is included after the limitations on camping set for in Section 221.3.d.

race track operator seeking to modify those standards to apply for a special permit as part of the overall process of modifying the existing standards that govern track operations.²⁴ It is an undisputed goal of zoning to eliminate nonconforming uses. <u>Verillo v. Zoning Board of Appeals</u>, 155 Conn. App. 657, 683, 687 (2015). Accordingly, if the operator of a race track that preexisted the special permit requirement obtained a special permit as part of process of updating the standards of the regulations, then the goal of bringing properties into conformity with existing regulations would be advanced.

Moreover, the law is clear that the Commission has no authority to modify the standards in the regulations through the special permit process alone, since only the zoning board of appeals has authority to vary zoning regulations. MacKenzie v. Planning & Zoning

Commission, 146 Conn. App. 406, 429 (2013). Accordingly, if there is to be a modification of the standards in this section, a zoning amendment must be part of the process. Thus, the

Commission was proper to encourage that changes in the standards in the regulations be accompanied both by a special permit application and a petition to amend the zoning regulations. Nonetheless, nothing in these sections specifies that the procedure in § 221.a.8 and § 221.3d is the only method by which the regulations must be amended, and the regulations themselves specify a method by which a change in the zoning regulations may be sought without a special permit application. See RR 29 (Zoning Regulations) §§ 911.2, et. seq.

6. The plaintiff has failed to demonstrate that the zoning amendments are not in conformance with the comprehensive plan.

The plaintiff claims that the amendments were not in accordance with the comprehensive plan, which is found in the zoning scheme within the Zoning Regulations. This claim is incorrect, because the amendments contested by the plaintiff are in fact found within the scheme

²⁴ Although the plaintiff or its predecessors have applied and received special permits for aspects of the race track operations, it has not applied for a special permit for the overall race track activities.

of the Zoning Regulations: the <u>Vaill</u> injunction was previously referenced in the regulations, and the restrictions on camping were part of the zoning scheme by virtue of the stipulated judgments in the ZBA appeals that arose out of interpretations of what camping activities were allowed under the zoning regulations and the track's nonconforming status. Moreover, while the plaintiff makes claims of severe competitive disadvantage, the plaintiff presented no evidence to document this claim to the Commission; even if it had, it is well established that "the credibility of witnesses and the determination of issues of fact are matters solely within the province of the agency." <u>Protect Hamden/North Haven from Excessive Traffic and Pollution. Inc., v. Planning and Zoning Commission</u>, 220 Conn. 527, 543 (1991). Accordingly, there is no merit to the plaintiff's claim that the zoning amendments were not in accordance with the Comprehensive Plan of zoning for the Town.

7. The amendments do not constitute snot zoning, target a single property owner, or seek to regulate a user rather than a use.

The plaintiff makes a number of catch-all arguments, none of which have merit. It first argues that the amendments were spot zoning because they affect only a small area and are not in harmony with the comprehensive plan. This claim ignores the fact that the amendments made no changes to the zoning map. The boundaries of the RE District, on information and belief, have not been materially altered since zoning was adopted in 1959. It also ignores the fact that the RE District allows a number of uses both as-of-right and by special permit besides a race track, that most of these uses require less land than a race track, and that it may well be possible to subdivide the current race track property to create additional lots with additional uses.

Moreover, as noted above, the amendments are in accordance with the Comprehensive Plan of Zoning. Accordingly, there is no merit to this claim.

The plaintiff next claims that the amendments regulate a user and not a use, claiming that incorporating the injunction language is evidence of this fact. This claim is false. If the amendments regulated a particular user, then they would apply only to the defendant in the original <u>Vaill</u> action, which they do not. Indeed, on information and belief, the plaintiff here is not the same party as the defendant in the injunction action. The amendments here do not apply to a particular user, but apply to the land in the RE District, whomever the owner happens to be. Moreover, that fact that a particular property is referenced in the text is neither unusual for a zoning amendment, nor is it evidence that a user is being regulated, because the regulation applies to the land, not the owner of the land.

Finally, the plaintiff claims that the regulations target a single property owner by virtue of its detailed regulation of the subject matter. However, the amendments apply no matter who are the owner or owners of the property. Given the nature of the use and surroundings (a race track surrounded by residences), and the fact that the use is allowed only by special permit, the detailed regulation is appropriate. See discussion at p.30, supra.

IV. <u>CONCLUSION</u>

For the foregoing reasons, the Commission requests that the Court dismiss this appeal.

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was mailed or delivered electronically on this 19th day of October 2016 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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DOCKET NO. LLI-CV-15-6013033 S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT LITCHFIELD

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

NOVEMBER 2, 2016

REPLY BRIEF OF THE PLAINTIFF LIME ROCK PARK, LLC

This reply brief is submitted by the plaintiff Lime Rock Park, LLC ("LRP") in response to the briefs of the Defendant Planning and Zoning Commission of the Town of Salisbury (the "Commission") and the Intervening Defendant Lime Rock Citizens Council, LLC ("LRCC"), both dated October 19, 2016 ("Comm. Br." and "LRCC Br.", respectively).

- I. <u>CGS § 14-164a preempts regulation of days and hours of racing.</u> (Responding to Comm. Br. 9-25 and LRCC Br. 20-26)
- A. The Amendments Limiting Days and Hours of Racing Are Conflict-Preempted by CGS § 14-164a.
 - 1. Section 14-164a authorizes racing on Sunday afternoons and during reasonable hours for the rest of the week.

CGS § 14-164a provides, in pertinent part:

(a) No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

(CGS § 14-164a(a) is attached as <u>Exhibit A</u> hereto.) LRCC admits that the Amendments are preempted if "the Track [can] show that § 14-164a affirmatively authorizes Sunday racing." (LRCC Br. 25). LRP agrees, for the law provides that a conflict between state statute and local

regulation exists where the local regulation "prohibits that which the statute authorizes." Bauer v. Waste Management of Connecticut, Inc., 234 Conn. 221, 235 (1995). The second sentence of CGS § 14-164a, through its use of the word "may," is a grant of authorization; it is legislative permission to conduct racing "at any reasonable hour of any week day or after twelve o'clock noon on any Sunday." It is well-established that a statute using the term "may" with reference to what the public or individuals "may" do is "mandatory" in that it is an authorization. State v.

Bartholomew, 103 Conn. 607, 612 (1925); Black's Law Dictionary (10th ed. 2014) ("may' ... 1.

To be permitted to: 'the plaintiff may close'"). Indeed, LRCC admits that the statute "is stated in the affirmative and includes no negative words." (LRCC Br. 22). Moreover, the Commission's brief recognizes that, in decades past, the Commission's own regulations read § 14-164a as "permitteling]" certain racing hours. (Comm. Br. 3) (the original Commission regulations provided that "[n]o races shall be conducted on any such track except during such hours as are permitted by Statute"). Thus, the Amendments purport to prohibit that which the statute authorizes and are thereby conflict-preempted.

The Commission argues that the statute only represents a "default" setting for the times at which racing may be conducted. (Comm. Br. 13). That may have been true prior to 1998, when the second sentence of Conn. Gen. Stat. § 14-164a contained the proviso: "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." (LRP Br. 4). But the Legislature amended the statute in 1998 to remove that proviso and end the sentence with a *period* after the word "Sunday." Even when legislative history is "silent," "[w]hen the legislature amends the language of a statute, it is presumed that it intended to change the meaning of the statute and to accomplish some purpose." State v.

Johnson, 227 Conn. 534, 543 (1993); see also United States v. Wells, 519 U.S. 482, 496-97 (1997) (even where legislative history contained evidence that amendment did not intend a "change of substance," the unambiguous linguistic consequences of the changed statutory language controlled). The second sentence of CGS § 14-164a is not merely a default setting. It is an unambiguous expression of legislative will capped with an unambiguous period that was put there after a presumptively intentional amendment.

For this same reason, the Commission's confused reliance on the statutory history of CGS § 14-164a cuts against the Commission's own interpretation. The Commission states that "once the Legislature began addressing permissible racing times, it explicitly acknowledged a municipality's right to regulate the days and hours of operation apart from the limitations set forth in the statute." (Comm. Br. 15). But the statute was amended in 1998, as discussed above, evincing the Legislature's will to terminate the municipality's right to regulate with respect to reasonable hours on weekdays and after noon on Sundays. The Commission claims there is no legislative history to support this change in authority. In so doing, however, the Commission ignores the "plain meaning rule." (See subsection 2 below.)

2. The proviso clause of the third sentence of section 14-164a does not modify the second sentence.

The Commission argues that the "provided" clause of the third sentence of § 14-164a modifies not only the primary clause of the third sentence, but also the entirety of the second sentence. (Comm. Br. 14-15; LRCC Br. 22). The four arguments the Commission and LRCC make with regard to this position all fail.

First, the Commission argues that punctuation is only a guide and may be disregarded. (Comm. Br. 15-16). However, the Commission cites cases dealing with the much more

ambiguous use of commas and semicolons, as opposed to the definitive all-important *period* at issue here. Further, the cases the Commission cites precede the enactment of CGS § 1-2z, which emphasizes the importance of textual primacy. In enacting CGS 1-2z, which codified the "plain meaning rule," the Legislature sent a clear message that statutes mean what they say and if they fail to properly say what the Legislature intends, the Legislature – not the courts – will revise the language as necessary:

Individuals who read our statutes should be able to rely upon the clear language of the statute. And it's really up to us to make that language say what we intend. If we don't intend what the language says, we have that unique power to change the language. The courts don't write statutes. The Governor doesn't write statutes. We do it. And what we're saying by this bill is that what the statute means is what it says unless it's ambiguous.

46 H.R. Proc. Pt.10, 2003 Sess., p.3328 (remarks of Representative Farr) (the cited portion of the legislative history is attached as Exhibit B hereto.) Significantly, the Legislature revised the third sentence of CGS § 1-164a in 2004, just one year after enacting CGS § 1-2z, and thus, would presumably have been particularly attuned to ensuring that the language was carefully drafted, with punctuation in the proper place. Modern precedent affirms that "[s]tuffing punctuation to the bottom of the interpretive toolbox would run the risk of distorting the meaning of statutory language and one component of written language is grammar, including punctuation." Indian Spring Land Co. v. Inland Wetlands, 322 Conn. 1, 15 (2016). A period denotes the end of a sentence, which is a complete thought. A period cannot be ignored as a fundamental precept of grammar, especially in view of the statutory amendment history.

Second, not only is the Commission's interpretation contrary to the statutory amendment history and fundamental precepts of grammar and punctuation as discussed above, it also violates the "proviso cannon" of statutory interpretation. Under the last antecedent rule, "qualifying

phrases, absent contrary intention, refer solely to the last antecedent in a sentence." Conn. Ins.

Guar. Ass'n v. Drown, 314 Conn. 161, 189 (2014); Scalia & Garner, Reading Law: The

Interpretation of Legal Texts, 154 (1st ed. 2012) ("Properly speaking, a proviso is a clause that introduces a condition by the word provided. ... It modifies the immediately preceding language."). The Commission cites Bateson v. Weddle, 306 Conn. 1, 17 (2012), where the Court found an exception to the last antecedent rule. (Comm. Br. 16). However, even in Bateson, the qualifying phrase was only found to modify an earlier clause within the same sentence of the document. It would be unprecedented to hold that a proviso in one sentence also applies to a completely separate sentence as in this case.

Third, the Commission argues that the term "such race or exhibition" in the proviso clause must have the exact same referent throughout the statute. (Comm. Br. 14-15). However, the Commission fails to read the third sentence of § 14-164a in context, which states "[t]he legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinance." (Emphasis added). Thus, LRP agrees that the term "such" can mean "having the quality just specified." (Comm. Br. 14-15). In the context of the third sentence of § 14-164a "such race or exhibition" refers to "the race or exhibition" that is proposed to be permitted on Sunday morning, i.e., the quality just specified. Other instances of "such race or exhibition" in other sentences should also be interpreted in light of their own proper linguistic and legal context. But with respect to the third sentence, it is grammatically and legally unreasonable to read the proviso clause of the third sentence as applying to other sentences of the statute.

Fourth, even if the proviso of sentence three modifies sentence two of § 14-164a - which it clearly does not - the proviso has no application to zoning regulation. The proviso only applies to "city, borough or town ordinances." The Commission cites to instances in case law where zoning regulations are called "zoning ordinances" or the like. (Comm. Br. 17; LRCC Br. 22-23). But these are just instances of imprecise usage having nothing to do with the outcomes of the cases cited. An "ordinance" is defined by CGS § 1-1(n) as an "enactment under the provisions of section 7-157," which in turn relates to enactments by the "legislative body" of any town. The Commission does not claim that it exercised its authority in this case under section 7-157, nor could it claim to be the "legislative body" of a town. The Amendments at issue in this case are zoning regulations, not ordinances. See Kaye v. Town of Westport, 1990 WL 290190, at *3 2 Conn. L. Rptr. 453 (Conn. Super. Aug. 21, 1990) (distinguishing "ordinances" enacted under 7-157 and zoning "regulations" enacted under section 8-2 because section 8-2 "in every instance refers to regulating not the enactment of ordinances") (attached as Exhibit C hereto); Bora v. Zoning Board of Appeals, 161 Conn. 297, 302 (1972) (zoning board exceeded its authority in limiting hours of operation where statute only allowed reduction of hours for liquor sales by "ordinance" or "town meeting").

3. Zoning commissions may not overrule the will of the people of this State as unambiguously expressed by their Legislature in CGS § 14-164a.

Finally, the Commission and LRCC argue that there is no preemption because the Legislature and planning and zoning commissions can concurrently regulate – with planning and zoning commissions authorized to regulate through CGS § 8-2. (Comm. Br. 18-21; LRCC Br. 23). However, "[i]n construing statutes, we are mindful that specific terms covering the given subject matter will prevail over other general language of the same or another statute which

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might otherwise prove controlling." Berlin Batting Cages, Inc. v. Planning & Zoning Comm'n, 76 Conn. App. 199 at 219 (2003) (internal citations and quotations omitted). Thus, the specific language in CGS § 14-164a addressing days of racing controls over the general grant of authority to regulate the use of land in CGS § 8-2. Concurrent jurisdiction may also exist where "both the statute and the ordinance are prohibitory and the only difference is that the ordinance goes further in its prohibition than the statute." Bauer, 234 Conn. at 235. Thus, in the case cited by the Commission, Modern Cigarette, Inc. v. Town of Orange, 256 Conn. 105, 129 (2001), there was no preemption because "[t]he statutory provisions in chapter 214 do not expressly authorize vending machines, but, rather, they impose a series of limitations or prohibitions on the use of cigarette vending machine." In contrast, as discussed above, § 14-164a is an authorization in view of its use of the word "may." There is no prohibition or licensing requirement in § 14-164a. The second sentence is a bare, unadorned, unambiguous authorization to conduct racing after noon on Sundays!

The Commission and LRCC also rely on CGS § 8-13, which provides that "[i]f the regulations made under authority of this chapter ... impose other and higher standards than are required in any other statute ... the provisions of regulations made under the provisions of this chapter shall govern." (Comm. Br. 21-22; LRCC Br. 24). But this statute merely reflects the same unremarkable proposition discussed in <u>Bauer</u> that a regulation can set a higher standard than a prohibitory statute. But the critical difference is that § 14-164a is *permissive* not prohibitory. A "higher" standard with respect to a *permissive* statute would be one giving *more permission*. In other words, § 8-13 would mean that the zoning regulation would govern if it

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¹The second sentence states: "Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday."

provided the higher standard of permission in authorizing racing during additional hours not covered by § 14-164a. In short, racing may occur after noon on Sundays. Period. This is a statutory right, which may not be taken away by a town agency.

In addition, the "standards" listed in CGS § 8-13 all pertain to physical characteristics ("width or size of yards, courts or other open spaces" the "height of building" "number of stories", "percentage of lot area to be left unoccupied"). Under the rule of *ejusdem generis*, "when a statute ... sets forth a specific enumeration of things, general terms will be construed to embrace things of the same general kind or character as those specifically enumerated." State v. Dickman, 146 Conn. App. 17, 28 (2013); see also, Anderson v. Ludgin, 175 Conn. 545, 553 (1978) ("Although the phrase "similar body" may be read to allow for some variation, it may not be used to expand the general area set out by the enumerated category."). As such, any standards found within the general term "other statute" in CGS § 8-13 "must be construed to be of the same general kind or character" as the listed standards. Operating days and hours are not physical characteristics such as those enumerated in CGS § 8-13. Thus, CGS § 8-13 is entirely consistent with the well-established conflict preemption law discussed above, holding that local regulation is preempted if it "prohibits that which the statute authorizes." Bauer, 234 Conn. at 235.

Lastly, the Commission argues that there is no preemption because the statute applies to all races, while the Amendments only regulate races on tracks. (Comm. Br. 22-23). The Commission's argument is non-sensical. Indeed, the Commission has it reversed – the entire scope of the regulation conflicts with the statute because races on tracks are a subset of all races. The Commission's argument is akin to a claim that a statute authorizing the sale of shirts on

Sunday would not preempt a regulation prohibiting the sale of <u>blue</u> shirts on Sunday. Their argument is fundamentally flawed.

The result dictated by the clear statutory language in this case is neither absurd nor unfair. It was rational for the Legislature to fear that local regulation might attempt to impose unreasonable limits on racing. The 1998 amendment to CGS § 14-164a authorizing reasonable hours of operation, including Sunday afternoon racing, prevents local governments from over-regulating tracks. The statute also strikes a balance between over-regulation and local control by not providing automatic permission for Sunday morning racing, but rather, leaving that issue to local control (through ordinance, not zoning regulation). In summary, because the Amendments purport to expand the Town's right to control racing hours, they are preempted by § 14-164a.

II. State Preemption of noise regulation is not limited to regulations that include decibel levels. (Responding to Comn, Br. 25-26 and LRCC Br. 26-30)

Citing Berlin Batting Cages, Inc. v. Planning and Zoning Commission, 76 Conn. App. 199 (2003), the Commission and LRCC claim that the State's preemption of noise regulations is limited to regulations that proscribe decibel levels. (Comm. Br. 26; LRCC Br. 29). The Appellate Court, however, did not so limit its ruling:

[W]e conclude that [CGS § 22a-67 et seq.] reflects the legislature's intent to preempt the field of noise pollution control. It is clear that the regulation at issue here imposes <u>a type</u> of noise pollution control that the statutory scheme was enacted to effectuate.

Berlin Batting at 219 (emphasis added). By referring to the decibel level regulation as "a type" of prohibited noise pollution control, the Court conveys that decibel level control is only one of multiple types of noise pollution control. Had decibel level limits been the only type of prohibited noise control regulations, the Court would have referred to such regulations as "the

type" of noise control the "statutory scheme was enacted to effectuate." Thus, the <u>Berlin Batting</u>

Court found that the State has preempted any kind of noise pollution regulation unless it is

enacted by a municipality's legislative body and approved by the Connecticut Department of

Energy and Environmental Protection ("DEEP").

LRCC cites CGS § 8-2 as authority for the Commission's adoption of noise regulations, claiming that this statute permits the Commission to regulate "sources of noise." (LRCC Br. 27). The defendant commission in Berlin Batting similarly cited CGS § 8-2 and the Appellate Court flatly rejected its argument:

Second, § 8-2 which grants local zoning commissions the authority to promulgate regulations, does not govern noise pollution laws. In fact, § 8-2, which sets forth in nearly exhaustive detail the types of regulations that local zoning commissions may promulgate, does not even mention noise or noise pollution.

Berlin Batting at 219. Therefore, while LRCC may be correct that CGS § 8-2 authorizes commissions to regulate sources of noise pollution, they can only regulate those sources for the purposes enumerated in § 8-2 (for instance, they can regulate their height, size of buildings, lot coverage, yard size, etc.). Even as to the more general purposes in § 8-2, the Court found:

Although § 8-2(a) does provide that regulations 'shall be designed ... to promote health and the general welfare,' we do not read that language in the enabling statute to necessarily confer authority in the zoning commission to promulgate regulations concerning noise pollution and, moreover, we certainly do not read that language to contradict the legislature's specific enactment in § 22a-67 et seq. [requiring municipal noise regulation to be by ordinance approved by the State].

Id. at 218. Thus, zoning commissions may not regulate sources of noise for the purpose of regulating their noise levels, which is precisely what the Amendments do. For instance, by differentiating between mufflered vs. unmufflered race car activities, the Commission is distinguishing between two ways of operating a race car – one of which makes more noise than

the other. This is clearly an effort to regulate noise pollution; and based on testimony throughout the public hearings on the Amendments, the overarching purpose of the Amendments – as reflected in the language (mufflered vs. unmufflered) – was to limit noise by incorporating the terms of the Court Order and Judgment². See e.g. Record Ex. 22 at 29 lines 5-6, 35 line 25, 39 line 25, 47 line 1 and 54 line 7, 57-58 lines 24-1.

Finally, LRCC states that "the Track has long acknowledged the Town of Salisbury's regulation of racing based on noise levels" because it has "not opposed the different treatment of 'mufflered' vs. 'unmufflered' racing" and has sought modifications to the 1979 and 1988 injunctions based on differences between the two. (LRCC Br. 30). The fact that LRP abided by the Court Order's requirements for mufflered vs. unmufflered racing and acknowledged the difference between two types of race car operations in a private nuisance proceeding does not demonstrate that LRP acknowledged the Town's ability to improperly regulate noise.

III. Enacting regulations for the purpose of incorporating terms of a private lawsuit exceeds the Commission's authority under CGS 8-2. (Responding to the Comm. Br. at 30-31 and LRCC Brief at 15)

"It is a cardinal rule of construction that provisions and amendments [of zoning regulations] must be enacted pursuant to the zoning enabling statute [CGS § 8-2]." Langer v. Zoning Comm'n, 163 Conn. 453, 458 (1972). In determining whether a commission is authorized to zone for a particular purpose, "we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment." Capalbo v. Planning & Zoning Bd. of Appeals, 208 Conn. 480, 490 (1988). Furthermore, a land use

² As noted at pp. 6-7 of LRP's Brief, references therein to the "Court Order" are to the 1959 Court Order in the private nuisance lawsuit as subsequently amended by court order and/or stipulation. References to the "Judgment" are to the judgment in the 1979 Salisbury Zoning Board of Appeals enforcement action regarding camping at the Track. (LRP's Brief also occasionally refers to the camping Judgment as the "Stipulation".)

commission "possesses only such rights and powers that have been granted expressly to it by the state and [] the powers of the commission should not be extended by construction beyond the fair import of the language of the enabling statute or to include by implication that which is not clearly within the express terms of that statute." Buttermilk Farms v. Planning & Zoning

Comm'n, 292 Conn. 317, 331 (2009) (internal citations and quotations omitted, emphasis in original). LRCC points out that "§ 8-2 does not discuss deference to private lawsuits." (LRCC Br. 15). And that is precisely the point. There is no statutory authority for Amendments enacted for the purpose of incorporating terms of private lawsuits. See Capalbo at 490 (zoning commissions may not regulate color because CGS § 8-2 "makes no mention whatsoever of colors."); Berlin Batting v. Planning & Zoning Comm'n, 76 Conn. App. 199, 218 (2003) (zoning commissions may not regulate noise because CGS § 8-2 "does not even mention noise or noise pollution").

The Commission's <u>stated</u> purpose in enacting the Amendments was to incorporate the terms of the Court Order and camping Judgment, which the Commission mistakenly believed were already part of the zoning regulations:

The Amendments ... set forth restrictions that are *already* apart of the Town's zoning scheme. Setting forth the standards in the regulations themselves allows the affected property owners to know what the zoning restrictions are without having to review outside documents.

Record, Exhibit 19 (emphasis in original). This purpose was amply reflected in the Commission's proceedings wherein the Chair discouraged discussion of the details (or substance) of the terms of the Court Order and Judgment in favor of discussion solely on whether – from a procedural standpoint – their terms should be adopted. (LRP Br. 18). Even assuming, arguendo, that portions of the Amendments serve land use purposes listed in CGS 8-2:

[W]hen the zoning body had made known on the record the reasons for its actions, the reviewing court ought only to determine whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations.

Pleasant Valley Neighborhood Ass'n v. Planning & Zoning Comm'n, 15 Conn. App. 110, 113 (1988) (internal citations and quotations omitted, emphasis added). Thus, given the Commission's stated reasons for adopting the Amendments, they were not authorized by CGS § 8-2. Absent statutory authority, they are illegal.

IV. Despite allegations to the contrary by the Commission and LRCC, there is no evidence in the Record that the Commission considered (or sought public comment on) the specific terms of the Court Order or camping Judgment that it incorporated into the Amendments. (Responding to Comm. Br. 27-30 and LRCC Br. 14-15)

It is axiomatic that a commission must <u>actually consider</u> the terms of zoning regulations it proposes to adopt and that the purpose of a public hearing is to allow the public to provide information regarding, or comments or opinions on, the proposed regulations to aid the Commission in its evaluation of the proposal. When a commission <u>actually considers</u> provisions it is adopting, commissioners consider, among other things, whether they govern areas the commission is allowed to regulate, accomplish the desired purpose, are clearly drafted, and are fair or legal; in other words – whether the proposed provisions are proper and effective land use regulations. LRP's brief summed this up as an effort to determine whether the proposed regulations are – in a word – "appropriate." Perhaps the LRCC could have better understood the argument if LRP had simply said that the Commission did not consider the actual provisions of Sections 221.1 and 221.3 at all. And, in fact, this is the case.

Neither the Commission nor the LRCC have cited to any portion of the Record to demonstrate that the Commission discussed or considered – or allowed discussion on – the many

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detailed provisions of the Court Order and camping Judgment that were incorporated, respectively, into section 221.1 and 221.3 of the Amendments. While the Commission may have "engaged in months of study before formally publishing the proposal" (LRCC Br. 14), neither the Commission nor the LRCC have pointed to any evidence that the Commission discussed anything beyond whether it was a good idea to incorporate the terms of the Court Order and camping Judgment into the Zoning Regulations. They have cited to nothing showing discussions on the specific terms of the Court Order or Judgment such as rationales for days and hours of operation, mufflered vs. unmufflered activities, camping locations, etc.

V. Contrary to the Commission and LRCC's position, the Regulations did not already incorporate all of the terms of the Court Order or Judgment. (Responding to Comm. Br. 29-31 and LRCC Br. 2, 10, 14, 15)

The Commission and LRCC incorrectly claim that the Amendments did nothing more than restate terms that were already incorporated into prior versions of the Regulations. (Comm. Br. 29-30; LRCC Br. 2, 10, 14, 15). As the Connecticut Appellate Court has found:

Since zoning is in derogation of common law property rights, however, the regulation cannot be construed beyond the fair import of its language to include or exclude by implication that which is not clearly within its express terms ... and doubtful language will be construed against rather than in favor of a restriction

Balf v. Manchester, 79 Conn. App. 626, 636-37 (2003) (internal citations and quotations omitted). The prior regulations incorporated only "hours" of "races" from the Court Order and did not incorporate any terms from the Judgment. (LRP Br. 19). Thus, the "express terms" of the prior regulations included nothing beyond "hours" of "races." Since LRP complied with the terms of the Court Order, there was never the need for a zoning enforcement action to enforce the provision incorporating "hours" of "races". Thus, there is no record of, nor is it clear how, relevant parties interpreted this provision. What is clear, however, is that the precise terms of the

regulatory provision that incorporated the Court Order did not incorporate days, race car activities other than "races", requirements for permissible mufflers, loudspeaker operation, motorcycle activity, camping and numerous other aspects of the newly-enacted Amendments.

VI. LRP did not waive the right to object to the Amendments' prohibition of Sunday racing. (Responding to LRCC Br. 19-20)

LRCC argues that LRP waived its zoning appeal rights because of alleged actions outside the scope of the record, taken by third-parties, in decades past, having nothing to do with the zoning amendments at issue in this appeal. (LRCC Br. 19-20). "A party claiming waiver has the burden of proving it." Lehn v. Marconi Builders, LLC, 120 Conn. App. 459, 464 (2010).

Nothing cited by LRCC evinces an intent on LRP's part to relinquish its zoning appeal rights. First, LRCC relies on actions taken by third-parties without a showing of privity. Second, LRCC relies on actions that were taken prior to 1998 when CGS § 14-164a was amended to remove any prospect of local regulation of LRP's authorization to race on Sunday afternoons. Third, LRP could not have waived its zoning appeal rights decades ago because waiver requires "knowledge of the existence of the right," and LRP's zoning appeal rights for the amendments at issue here did not exist decades ago. Dichello v. Holgrath Corp., 49 Conn. App. 339, 349 (1998). Fourth, actions taken with reference to court judgments have nothing to do with whether certain zoning regulations are legal and valid. Fifth, as the court is aware, LRP has also moved to modify the court's injunction under grounds that include the preemption issue raised in this appeal.

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VII. The plain language and fair import of Sections 221.a(8) and 221.3.d of the Regulations requires a special permit application as a prerequisite to seeking a petition to amend the Regulations, and thus these sections are invalid. (Responding to Comm. Br. 32-33 and LRCC Br. 30-32)

Amendments Sections 221.1.a(8) and 221.3d both state "[t]he parameters in this subsection" – that is, the parameters in the zoning regulations themselves, as opposed to limits applicable to a particular party under an individual permit – may be amended upon "filing and approval" of two things: 1) a special permit application; and 2) a petition to amend the zoning regulations. As the Commission acknowledges, the filing of a special permit application cannot amend the zoning regulations. (Comm. Br. 33). Therefore, the plain language of these sections makes no sense. And it makes no sense regardless of whether it would be "appropriate" for someone seeking a regulatory amendment to simultaneously file a special permit application, (Comm. Br. 32) or whether the Commission is trying to "encourage" such tandem filings. Id. at 33. The language in these sections makes sense only if its intent is to compel an applicant to take both steps in order to amend the Regulations, or at a minimum, to mislead applicants or future commissions into believing dual applications (and approvals) are required; and as both the LRCC and Commission have acknowledged, that would be illegal.

Contrary to LRCC's claims, LRP is not challenging the Commission's ability to regulate race tracks generally by special permit³ or "attacking the special permit provisions" in the Amendments. (LRCC Br. 30, 31). Nowhere in its brief does LRP contest the Regulations' designation of race track operation as a special permit use. Rather, LRP is challenging the

While LRP is not challenging the Commission's decision to make racing generally a special permit use, the issue of whether <u>LRP</u> must obtain a special permit to continue its use is not the subject of this appeal or the Amendment proceedings before the Commission. <u>See</u> LRP Brief p. 24 fn. 24.

Amendment provisions that – by their plain language – certainly appear to require someone seeking to amend the race track regulations to apply for and obtain a special permit.

VIII. Responses to Factual Allegations⁴

A. Race Tracks are and always have been a permitted use despite their inadvertent omission from the Table of Uses.

The Commission avers that because race tracks were omitted from the Table of Uses in the 2004 and 2013 versions of the Regulations, race tracks were prohibited under those regulations. (Comm. Br. 4 n.3). The Commission fails to note, however, that: 1) the 2004 and 2013 Regulations included provisions addressing race track operations in the body of the Regulations (the same provisions included since 1959 with the few changes discussed in LRP's brief), see Record Ex.16-840 sec. 722; and 2) the Commission and its counsel have repeatedly acknowledged that the omission of race tracks from the Table of Uses in 2004 and 2013 was "inadvertent." See Record, Ex. 18 at 2, para. 5. In interpreting regulations, they must be "considered as a whole, with a view toward reconciling [their] separate parts in order to render a reasonable overall interpretation...." Fedus v. Zoning & Planning Comm'n, 112 Conn. App. 844, 849 (2009). When the regulations are considered as a whole, the inclusion of an entire section pertaining to race tracks within the body of the Regulations clearly indicates that race tracks were not prohibited. Indeed, why would regulations include a section discussing the parameters of a prohibited use? The Commission cites Gada v. Zoning Board of Appeals, 151 Conn. 46

⁴ Although conceding it is not a matter of Record, LRCC proceeds to highlight Mr. Barber's age, stating "it is well known that Mr. Barber is nearing retirement" and then guessing as to his motive for seeking Sunday racing (getting a higher price for the sale of the track). (LRCC Br. 2). It is LRP's understanding that the zoning statutes and regulations at issue do not discriminate on the basis of age. Further, the Record evidence contradicts LRCC's hypothesis. In fact, Mr. Barber has provided for the continued operation of the Track after his death through a testamentary trust. Record, Ex. 22 at 132-33.

(1963) in support of the proposition that the omission of the track from the Table of Uses renders it a prohibited use. Gada, however, simply stands for the proposition that under regulations that are permissive, "any use which is not specifically permitted is automatically excluded." Id. at 48. Gada is distinguishable, however, because the use in question was not discussed anywhere in the regulations, no table of uses is mentioned and thus, there is no discrepancy between a table of uses and the body of the regulations, and there was no indication that the omission of the subject use was inadvertent. Therefore, despite the admittedly inadvertent removal of race tracks from the Table of Uses in the 2004 and 2013 Regulations, race tracks have been a permitted use in the RE zone from the initial adoption of the Regulations through the present date.

As stated in its brief, LRP respectfully requests that this court sustain its appeal and find that the Amendments are illegal and without effect.⁵

THE PLAINTIFF, LIME ROCK PARK, LLC

BY:

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FOR/ (

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Signature of the Amendment provisions is found to be invalid, all must fail. See Langer v. Planning & Zoning Comm'n, 163 Conn. 453, 459 (1972). While a local severability provision (such as Section 103.1 of the Regulations) can overcome the standard presumption that a regulation is meant to be "indivisible", in this case, it was critical to the Commission that the Amendments stand or fall as a whole. See e.g., Record Ex. 18 at 3, para. 6 and Ex. 23 at 45, remarks of Chairman Klemens: "This is a whole bundle, and some things in it ostensibly are better for the neighborhood and some things ostensibly may be better for the track. And I don't want to have some judge in a Superior Court cherry pick the things out of it and we end up with something that is then no longer fair." Also, although the Commission eliminated Section 106.1 (the "In Terrorem Provision"), which clearly stated that the Regulations would stand or fall together, the decision to eliminate that section was based on lack of proper public notice for the provision rather than a desire to allow invalid provisions to be severed. See Comm. Br. 9 n.4.

CERTIFICATION

This is to certify that a copy of the foregoing has been sent, via e-mail and U.S. mail, postage prepaid, on the above date to:

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ORDER 435704

DOCKET NO: LLICV156013033S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT OF LITCHFIELD AT LITCHFIELD

V. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI

8/30/2017

ORDER

The following order is entered in the above matter:

ORDER:

Lime Rock Park, LLC and the Planning and Zoning Commission (P & Z) will file supplemental briefs on the four cases cited today by the P & Z as to the authority of a zoning body to regulate noise on or before 9/11/17 at 5 p.m.

The parties, on the record, agreed to waive the 120-day rule and consented to the court finishing its memorandum of decision on or before October 16, 2017.

435704

Judge: JOHN DAVID MOORE

LLICV156013033S 8/30/2017

DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

:

PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL. : SEPTEMBER 11, 2017

SUPPLEMENTAL BRIEF OF DEFENDANT PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY 1

A PLANNING & ZONING COMMISSION HAS AUTHORITY TO CONSIDER NOISE IN THE REGULATION OF INDIVIDUAL LAND USES.

At oral argument before the Court, Moore. J. on August 30, 2017, counsel for the Salisbury Planning & Zoning Commission ("Commission") cited five cases from the Supreme and Appellate Courts where these Courts affirmed that a local commission may consider noise concerns in its regulation of particular land uses.² Those cases were:

- Husti v. Zuckerman Property Enterprises, Ltd. 199 Conn. 575, appeal dismissed, 479 U.S. 802 (1986)
- Cambodian Buddhist Society of Connecticut. Inc. v. Planning & Zoning Commission. 285 Conn. 381 (2008)
- 3. <u>Hayes Family Limited Partnership v. Town Plan & Zoning Commission</u>, 115 Conn. App. 655 <u>cert. denied</u>, 293 Conn. 919 (2009)

¹ Counsel for the Intervening Defendant, Lime Rock Citizens Council, LLC, has informed counsel for the Salisbury Planning & Zoning Commission that the Citizens Council joins in this brief.

As noted at oral argument here, the zoning amendments at issue do not regulate noise. The noise or sound decibel level of any particular racing activity is not addressed in the regulations, and both mufflered and unmufflered events may be as noisy or as quiet as the operators may desire without the sound level being a violation of the regulations. The regulations do, however, regulate hours of operation of a particular use. The Lime Rock Race Track has not claimed that a zoning commission lacks authority to establish hours of operation for a specific use.

- Children's School. Inc. v. Zoning Board of Appeals. 66 Conn. App. 615, cert. denied, 259 Conn. 903 (2001)
- 5. Martland v. Zoning Commission, 114 Conn. App. 655 (2009).

In a number of these cases, the Court upheld denials of applications, in part, because of noise concerns. If a planning and zoning commission can deny a use altogether because of noise, then it is certainly permissible for a planning and zoning commission to consider noise impacts in specifying conditions under which a particular use may be approved.

The first case discussed by counsel was Husti v. Zuckerman Property Enterprises, Ltd. 199 Conn. 575 (1986), appeal dismissed, 479 U.S. 802 (1986). This was a zoning enforcement action to prohibit the use of the Pinecrest Country Club's property for outdoor concerts or theatrical performances. According to the Court, "[t]he concerts resulted in considerable traffic congestion and the noise they generated could be heard at great distances". Id., 578. The use was not allowed in a residential district, and the existing nonconforming use on the property was for picnics or outings only and did not include concerts or other activities. Id. The property owner challenged the town's cease and desist order on the ground that it violated its First Amendment rights. Id., 579-80. The Court initially noted that "there is little question that local governments possess the constitutional authority to regulate the use of land." Id., 580. The Court noted, however, that when a zoning law constricts the realm of permissible expression, courts employ a higher level of scrutiny to determine whether the law is valid under the First Amendment. Id. Accordingly, the Court reviewed whether there was a constitutional justification for the zoning restriction excluding outdoor entertainment from a residential area. Id. As part of this initial inquiry, therefore, the Court reviewed whether the zoning restriction served a substantial government interest. In confirming that there was such a substantial government interest, the

Court stated that the dangers posed by the outdoor concerts - the creation of <u>noise</u>, attracting crowds, and traffic congestion - were "precisely the kinds of dangers that zoning is meant to combat". <u>Id.</u>, 738. As stated by the Court:

A city has undeniably important interests in protecting the character of its residential neighborhoods and in promoting the health, safety, and welfare of its citizens. . . . As Justice Marshall has observed, "[zoning] may indeed be the most essential function performed by local government. for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life." . . . The trial court in this case reasonably concluded that performances at an outdoor amphitheater located in a residential area threatened the quality of life and the safety of the inhabitants of the neighborhood by causing noise, attracting crowds, and creating traffic congestion. These are precisely the kinds of dangers that zoning is meant to combat; see General Statutes § 8-2² and that justify content-neutral regulation of the time, place, and manner of expression. Consequently, the trial court correctly found that the city had imposed restrictions on outdoor entertainment at Pinecrest in furtherance of substantial government interests.

(brackets in original; underline and bold added; text of footnote omitted; citations omitted.)

Of particular interest is Justice Peters' citation to General Statutes § 8-2 (which is quoted in full in a footnote) as the authority for a zoning commission to consider noise in adopting a zoning scheme to protect the quality of life for those in residential areas. This reasoning contradicts a portion of the analysis by the Appellate Court in <u>Berlin Batting Cages</u>, <u>Inc. v. Planning & Zoning Commission</u>, 76 Conn. App. 199 (2003), where the Court appeared to suggest that a zoning commission has no authority to regulate noise simply because the word "noise" is not used in Gen. Stat. § 8-2. <u>Id.</u>, 218. As a matter of simple authority, the Supreme

As noted at oral argument, the Appellate Court's simplistic conclusory statement in <u>Berlin Barting Cages</u> ignores the general grant of authority set forth in Gen. Stat. § 8-2 to regulate land use and impose conditions to ensure that the use is in fact compatible with the surrounding area. This is particularly evident in the enabling authority to grant special permits in § 8-2, which states that a zoning commission "may provide that certain classes or kinds of . . . uses of land are permitted only after obtaining a special permit . . . <u>subject to standards set forth in the regulations and the conditions necessary to protect the public health, safety, convenience and property values.</u>" (emphasis added). As also noted at oral argument, Gen. Stat. § 8-2 does not mention the authority to regulate lighting, require landscaping, or review the appropriate location of a dumpster. Nonetheless, zoning commissions routinely review

Court's analysis in <u>Husti</u> is entitled to more weight and credibility than the lower Appellate Court's analysis in <u>Berlin Batting Cages</u>.⁴

It is true that the permissible hours of operation for racing activities in the zoning regulations distinguish between mufflered activities and unmufflered activities, allowing less time for the unmufflered activities than for the mufflered activities. This regulation, however, is a regulation of a use and is not a regulation of sound levels. The unmufflered activities are the "real racing" activities, which draw larger amounts of both participants and spectators. These more highly attended events produce greater impacts with respect to traffic, traffic congestion, parking, the need for police, fire and safety personnel, and overall property values – the very "quality of life" issues discussed by Justice Peters in Husti. The amended zoning regulations also authorize and regulate overnight camping, a land use that will be utilized more frequently for the attendees of the larger, unmufflered racing events.

<u>all</u> of these things for non-residential use applications despite the failure to explicitly mention those items in Gen. Stat. § 8-2.

Notwithstanding its parsimonious interpretation of Gen. Stat. § 8-2, the Appellate Court correctly ruled in Berlin Batting Cages that the Berlin Planning and Zoning Commission could not simply incorporate DEEP noise standards into the zoning regulations. The statutory scheme set forth at Chapter 442 of the General Statutes provides that any decibel level regulation adopted by a municipality must be by ordinance and must first be approved by the DEEP Commissioner, which was not done in the Berlin case. Gen. Stat. § 22a-73. As noted by the Court, "It is clear that the regulation at issue imposes a type of noise pollution control that the statutory scheme was enacted to effectuate; the regulation specifically refers to the commissioner's regulations, promulgated under the authority conferred by the statutes." Id., 219 (emphasis added). The Court did not state all types of noise pollution controls are preempted, but the type of controls addressed in Chapter 442, i.e., the specific decibel level controls established by the statutory scheme. See also, Gen. Stat. § 22a-76 discussed at page 10, infra (remedies of Chapter 442 are not exclusive). Accordingly, the Appellate Court correctly found that the regulation of noise levels attempted by the Berlin Planning and Zoning Commission was inconsistent with statutory scheme, and thus illegal.

⁴ It should be noted that the <u>Husti</u> decision was decided in 1986. The state statutes regulating noise were adopted in 1974. Accordingly, the statutory scheme authorizing state and local noise regulations had been in effect nearly 12 years at the time the Supreme Court rendered its decision in <u>Husti</u>.

⁵ Counsel for the plaintiff has argued that more unmufflered activities were needed to support major events sponsored by relevant sanctioning bodies, and that the current limitation on unmufflered events threatens the economic vitality at the racetrack. RR Ex. 10-17, Motion to Modify Injunction and Judgment, ¶ 7, 8, 9.

Other cases cited by counsel at oral argument confirm that a zoning commission may consider noise when regulating land uses.

In Cambodian Buddhist Society of Connecticut, Inc. v. Planning and Zoning Commission, 285 Conn. 381 (2008), the Supreme Court upheld a local planning & zoning commission's denial of a special exception to build a Buddhist temple on a ten-acre lot in a residential zone in Newtown. One ground for denial was that the proposed use was not in harmony with the general character of the neighborhood. Id., 436 - 440. The Court reviewed the record, which included oral testimony about excessive noise from past events⁶ and a written petition regarding excessive noise and other impacts from proposed events.⁷ The evidence disclosed that there would be twelve annual festivals, some occurring over multiple days, id., 439, and that the number of persons attending some events had exceeded 450 people and 148 cars. Id., 439. While the court concluded that there was not substantial evidence in the record to support a denial because of traffic congestion or safety, there was substantial evidence for the commission to conclude that "that a parking lot for 148 cars would be a significant source of noise and disruption in the neighborhood." Id., 440. The Court concluded that "this evidence supported the conclusion that the activities at the proposed temple would cause a significantly greater disruption to the neighborhood than any permitted use of the property would, and. therefore, the proposed use clearly was not in harmony with the general character of the

Many neighboring residents complained that, in the years since the society had purchased the property, it had held a series of daylong and weekend long events involving crowds of up to 500 people and 150 cars. Outdoor loudspeakers had been used at the events to play amplified "pop" music that could be heard one-half mile away. One neighboring resident had indicated that these disruptive events had occurred every weekend, and, as a result, he and his family had been forced to move.

Id., 437.

⁶ As stated by the Court:

⁷ "The petition expressed concern over the lack of information about the number of people who would be using the proposed temple, increased traffic, excessive noise and potential well and septic problems." <u>Id.</u>, 437.

neighborhood. We conclude, therefore, that the commission's decision that the proposed use violated § 8.04.710 of the regulations was supported by substantial evidence." <u>Id.</u> The Court's reference to noise impacts as part of the substantial evidence in the record supporting the decision necessarily means that a commission can properly consider noise impacts from a use when regulating that use.

In Haves Family Limited Partnership v. Town Plan and Zoning Commission. 115 Conn. App. 655, cert. denied. 293 Conn. 919 (2009), the Appellate Court found that there was substantial evidence in the record to support the Glastonbury Planning & Zoning Commission's decision to deny a special permit application to construct a pharmacy. The application involved removing an existing hillside abutting residential properties. The reasons for denial included: "The project would result in an unacceptable level of impact on neighboring properties, in the form of both noise and visual intrusions, and on the environment, and is therefore incompatible with the existing neighborhood." Id., 658 & n.3 (emphasis added). In finding that there was sufficient evidence in the record to support the commission's conclusion, the Court stated:

The evidence revealed that the removal of the excavated material from the site would require more than 5700 dump truck loads and more than 11,000 round trips, with a truck leaving the site every two minutes.... Additionally, evidence was presented that the plaintiffs' proposal would directly impact neighboring residential properties not only by way of increased noise and traffic, but also in that it would adversely affect their property values. On the basis of the foregoing and our thorough examination of the record, we conclude that there was adequate evidence to support the commission's reasons for denying the special permit.

<u>Id.</u>, 661-62 (emphasis added). Accordingly, in this post-<u>Berlin Batting Cages</u> case, the Appellate Court found that noise, along with other impacts, were among the impacts the commission could review and consider when reviewing and denying a special permit application.

In <u>Children's School, Inc. v. Zoning Board of Appeals</u>. 66 Conn. App. 615, <u>cert denied</u>. 259 Conn. 903 (2001), the Appellate Court reversed a decision from the superior court that held

there was not substantial evidence in the record to support the decision of Stamford Zoning

Board of Appeals to deny a special exception application for a school expansion. The Appellate

Court held that the trial court had improperly substituted its judgment for that of the local board,

and that there was substantial evidence in the record to support the board's decision.

The special exception application in that case involved increasing a school building in a residential zone from 3572 square feet to 11,573 square feet and an increase in enrollment from 103 students to 160 students. <u>Id.</u>, 616. The Stamford regulations explicitly authorized the board to take into account noise and other impacts when evaluating the nature and intensity of the use in relation to the site and surrounding area. In finding that there was substantial evidence to support the board's decision to deny the application, the Court stated that "the mere fact that the proposed exception would result in compliance with [another section of the regulations] does not override the <u>noise</u>, safety and area considerations of § 19–3.2(a)." <u>Id.</u>, 630. The Court concluded:

The board was entitled to credit the testimony and evidence adduced during the four days of public hearings in arriving at its ultimate conclusion that the proposed use was too intense for the surrounding area. It cannot be said that the

(emphasis added). Children's School, Inc., 66 Conn. App. at 621 & n.1.

⁸ As noted in footnote 1 of the opinion. Section 19-3-.2 of the Stamford zoning regulations provided in part:

a. Special Exceptions shall be granted by the reviewing board only upon a finding that the proposed use or structure or the proposed extension or alteration of an existing use or structure is in accord with the public convenience and welfare after taking into account, where appropriate:

⁽²⁾ the nature and intensity of the proposed use in relation to its site and the surrounding area. Operations in connection with special exception uses shall not be injurious to the neighborhood, shall be in harmony with the general purpose and intent of these Regulations, and shall not be more objectionable to nearby properties by reason of noise, fumes, vibration, artificial lighting or other potential disturbances to the health, safety or peaceful enjoyment of property than the public necessity demands.

conclusion of the board did not comport with law and logic in light of the nature of the area, noise concerns, traffic concerns and health concerns. We conclude that the board properly exercised its discretion in denying the application for the special exception and that there was substantial evidence to support its finding that the use was too intense for the surrounding area under the zoning regulations.

<u>Id.</u>, 630-31 (emphasis added).

In <u>Martland v. Zoning Commission</u>, 114 Conn. App. 655 (2009), the Appellate Court reviewed the validity of a condition of approval required by the Woodbury Zoning Commission when approving a special permit to excavate earth materials from a portion of a pond. In approving the application, the Commission required the applicant to restore a sloped berm. approximately 1345 feet in length, that varied in height from 3.5 to 18 feet and in width from 40 to 120 feet. <u>Id.</u> 657. The applicant challenged the condition on appeal.

The commission argued that the berm acted as a noise buffer. When reviewing this claim, the trial court stated that, in accordance with Berlin Batting Cages, the state had adopted a comprehensive legislative scheme in the field of noise control, and that the Town of Woodbury had not adopted noise regulations in the manner authorized by statute. See Martland v. Woodbury Zoning Commission, 2007 WL 2702833, *7. *9. The trial court also reviewed the record, and found that the evidence to support the conclusion that the berm was necessary to reduce off-site noise was the speculative general concerns of two lay opponents, and that the condition was not supported by the record.

The Appellate Court reviewed the same claim, but confined its analysis to whether there was substantial evidence in the record to support the decision. It concluded as follows:

On the basis of our review of the entire record, we conclude that the evidence pertaining to the berm as a noise buffer is not substantial because it is not supported by anything other than speculation and conjecture on the part of those objecting to the plaintiffs' proposed activities.... Neither Roundy nor Leavenworth indicated any type of expertise that would buttress their lay opinion

on the berm's ability to buffer the surrounding areas from noise. Their statements relating to the change in noise if the berm was not restored amount to speculation and a general, unsubstantiated concern. ... There was no scientific data comparing the noise levels of the area with the berm in its present and proposed conditions. Cf. Rhudy v. Fairfield University, Superior Court, judicial district of Fairfield, Docket No. CV-99-0368012-S, 2000 WL 1269296 (August 18, 2000) (applicants for temporary injunction presented testimony of lighting experts and sound, noise or acoustic experts). Even if we assume arguendo that the noise level would increase as a result of the changes to the berm, the record is devoid of any evidence indicating how much of a noise increase would be permissible before the public health, safety, convenience or property values would be impacted....

... In the present case, the record reveals that the evidence with respect to the berm as a noise buffer was inadequate to reach the necessary threshold to support the imposition of the condition by the defendant. Accordingly, the court properly determined that the requirement of the restoration condition was improper.

Martland, 114 Conn. App. at 665-67 (citations omitted).

The Appellate Court's decision in Martland is important because, unlike the trial court's decision, the Appellate Court confined its analysis to whether there was substantial evidence in the record to support the condition that the berm was needed as a noise barrier. The Court's analysis further suggests that if there were substantial evidence in the record to support the decision (such as the acoustical evidence referred to in the Rhudy case), it would have upheld the condition. If the Appellate Court had adopted a broad interpretation of Berlin Batting Cages, it could have easily held that the condition was unauthorized because the legislature has held that noise can be regulated on the local level only by an ordinance approved by the DEEP in accordance with the statutory scheme in Chapter 442. The fact that it did not do so – but instead undertook the fact-intensive analysis of reviewing the specific record in front of it – demonstrates that the Appellate Court did not intend Berlin Batting Cages to mean that a zoning commission cannot consider noise when regulating different land uses.

The conclusion that a zoning commission can consider noise concerns when adopting zoning regulations under Gen. Stat. § 8-2 is further buttressed by an examination of the statutory and regulating schemes for the regulation of noise levels also reviewed by the Appellate Court in Berlin Batting Cages. See Gen. Stat. §§ 22a-67 through 22a-76. In the final statute in this chapter (§ 22a-76), the legislature has acknowledged that the provisions and remedies set forth in the chapter are not exclusive and that other remedies provided by statute remain available. As stated in Gen. Stat. § 22a-76:

The provisions and remedies under this chapter are not exclusive and shall be in addition to any other provisions and remedies provided for in any such of the general statutes or which are available under common law.⁹

Accordingly, "other provisions and remedies" provided for in any section of the General Statutes includes the regulation of land use authorized under Gen. Stat. § 8-2, which authorizes a zoning commission, in its regulations, to provide that "certain classes or kinds of. . . . uses of land are permitted only after obtaining a special permit . . . subject to standards set forth in the regulations and to conditions necessary to protect the public health safety, convenience and property values." Accordingly, the specific provisions of Section 22a-76 caution against the overly broad reading of Berlin Batting Cages advocated by the plaintiff here.

Finally, the State regulations are fully consistent with what the Commission has done here. The regulations provide that noise at racing events is exempted from the noise standards.

⁹Interestingly, although the Appellate Court in <u>Berlin Batting Cages</u> quoted from other statutes in Chapter 442, it totally ignored this final statute of the chapter.

¹⁰ Gen. Stat. § 8-2 further provides:

Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood, and other dangers; to promote health and the general welfare; to provide adequate light and air; . . . Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

but this exemption is "is effective only during the specific period(s) of time within which such use is authorized by the political subdivision or government entity having lawful jurisdiction to sanction such use". ¹¹ In other words, the regulatory scheme encourages exactly what the Commission has done here – racing events should be regulated, not by setting permissible noise levels, but establishing hours of operation for such events.

CONCLUSION

While the zoning regulations here regulate hours of operation and not noise levels, case law from the Supreme and Appellate Courts confirm that a zoning commission may consider noise from the particular land use when regulating that land use.

THE DEFENDANT,
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OF THE TOWN OF SALISBURY

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Exempted from these Regulations are:

(e) Noise created by the use of property for purposes of conducting speed or endurance events involving motor vehicles shall be exempted but such exemption is effective only during the specific period(s) of time within which such use is authorized by the political subdivision or governmental entity having lawful jurisdiction to sanction such use.

¹¹Section 22a-69-1.8 provides in part:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Brief was mailed or delivered electronically on this 11th day of September 2017 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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DOCKET NO. LLI-CV-15-6013033 S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT LITCHFIELD

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

SEPTEMBER 11, 2017

SUPPLEMENTAL BRIEF OF THE PLAINTIFF LIME ROCK PARK, LLC

This supplemental brief is submitted by the plaintiff Lime Rock Park, LLC ("Lime Rock") pursuant to the Court's order dated August 30, 2017. (Dkt. 152.00). The defendant, Planning and Zoning Commission of the Town of Salisbury ("Salisbury P&Z"), has cited five additional cases for its purported authority to regulate noise despite the preemption analysis and holding of the Appellate Court in *Berlin Batting Cages, Inc. v. Planning & Zoning Comm'n of Town of Berlin*, 76 Conn. App. 199 (2003).

By way of background, *Berlin Batting* analyzed the preemptive effect of Chapter 442 of the Connecticut General Statutes, Sections 22a-67 et seq., entitled "Noise Pollution Control," on municipal planning and zoning regulation of noise. See Berlin Batting, 76 Conn. App. at 215-19. Chapter 442 "empowers the commissioner of environmental protection to develop, adopt, maintain and enforce a comprehensive state-wide program of noise regulation as well as to work with local governments in their efforts to abate noise pollution." Id. at 216. Municipalities, including through their planning and zoning commissions, were "encouraged" to regulate noise, but only by first obtaining approval of the commissioner of environmental protection. Id. The Appellate Court found Chapter 442 to be intended by the legislature as "a comprehensive plan for state and local efforts to abate noise pollution" and had "preempt[ed] that field of legislation." Id. at 217. "The legislature has provided, in unambiguous language, that no ordinance shall be effective until such ordinance has been approved by the [environmental

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protection] commissioner." *Id.* The Appellate Court also rejected the planning and zoning commission's argument, which appears to be the same as the Salisbury P&Z's current argument, that "land use regulations" are not included within Chapter 442's purview. *Id.* at 218.

Despite the clarity of *Berlin Batting*, Salisbury P&Z has cited to five cases that it claims show that it may regulate noise without commissioner approval consistent with Chapter 442. *Husti v. Zuckerman Property Enterprises, Ltd.*, 199 Conn. 575 (1986); *Cambodian Buddhist Society of Connecticut, Inc. v. Planning & Zoning Commission*, 285 Conn. 381 (2008); *Hayes Family Ltd. Partnership v. Town of Glasonbury*, 115 Conn. App. 655 (2009); *Children's School, Inc. v. Zoning Board of Appeals*, 66 Conn. App. 615 (2001); *Martland v. Zoning Commission of Woodbury*, 114 Conn. App. 655 (2009). However, not a single one of these cases cites to, much less analyzes, the statutory scheme of Chapter 442 of the General Statutes. Thus, there is nothing in any of the cases cited by Salisbury P&Z to indicate whether the environmental protection commissioner had approved the zoning regulations at issue there.

The preemption argument advanced here is not that planning and zoning commissions are incapable of regulating noise; it is that they are incapable of doing so without environmental protection commissioner approval (which Salisbury P&Z did not obtain here). Since the issue of Chapter 442 was not raised in any of these cases, the court should assume that commissioner approval had been properly obtained in all of these cases. It should not be surprising that these cases exist given that Chapter 442 was meant to not only permit, but to "encourage," local noise regulation. *Berlin Batting*, 76 Conn. App. at 216. It is just that certain procedures must be followed, which were concededly not followed in this case.

Chapter 442 represents a comprehensive and state-wide plan for the regulation of noise. Salisbury P&Z's contention that it is allowed to regulate noise through land use regulation, even

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if it cannot regulate "decibel levels," is not consistent with that clear purpose. That interpretation of Berlin Batting is contrary to the plain language of the Appellate Court's opinion and MSW Associates LLC v. Planning Commission of Danbury, 2014 WL 4637476, DBD-CV08-4008817-S (Aug. 8, 2014). In MSW, the plaintiff appealed the Commission's denial of a special permit based on consideration of whether the plaintiff's proposed use of the land would emit excessive amounts of noise in violation of an ordinance. Id. at *7. The ordinance was not a maximum decibel regulation as in Berlin Batting, but one that prohibited the issuance of a special permit if the "proposed use" of the land "will create a nuisance having a detrimental effect on adjacent properties." Id. Applying Berlin Batting, the Court ruled that the Commission could not deny the special permit application based on such a consideration of noise. Id. at *9-10. Thus, Berlin Batting reaches not only decibel level regulation but also land use regulation adopted or applied with a purpose of curbing noise's effect on adjacent properties.

For these reasons, the cases cited by Salisbury P&Z are neither inconsistent with nor unexpected in view of *Berlin Batting*.

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CERTIFICATION

This is to certify that a copy of the foregoing has been sent, via e-mail and U.S. mail, postage prepaid, on the above date to:

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DOCKET NO. LLI-CV-15-6013033S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT

٧.

OF LITCHFIELD

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL.

SEPTEMBER 26, 2017

INTERVENING DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY

Intervening defendant, Lime Rock Citizens Council, LLC ("Council"), respectfully gives notice to the Court of the decision of the Connecticut Appellate Court in St. Joseph's High School, Inc. v. Planning and Zoning Commission of the Town of Trumbull, 176 Conn. App. 570 (2017). A copy of the decision, which was officially released on September 19, 2017, is attached hereto as Exhibit A.

This decision, particularly the Court's analysis at pages 603-608 and 611-615, is relevant to the issue of whether a local zoning commission may consider noise concerns in its regulation of particular land uses. This issue was the subject of additional argument on August 30, 2017, as ordered by the Court (151.00), was the subject of Supplemental Briefs filed on September 11, 2017 (pursuant to the Court's Order (152.00)) by plaintiff Lime Rock Park, LLC (154.00) and by defendant Planning and Zoning Commission of the Town of Salisbury in which Brief the Council joined (155.00), and was raised at the May 10, 2017 argument of this appeal and in the initial Briefs of all parties (127.00; 134.00; 136.00; 138.00).

INTERVENING DEFENDANT, LIME ROCK CITIZENS COUNCIL, LLC

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CERTIFICATION

I hereby certify that a copy of the foregoing Notice of Supplemental Authority was electronically delivered, on this 26th day of September, 2017 to all counsel of record, as follows:

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Commissioner of the Court

DOCKET NO: CV-15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT TORRINGTON

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

JANUARY 31, 2018

STATE OF CONNECTION

MEMORANDUM OF DECISION

INTRODUCTION

Lime Rock Park, LLC (Park) filed this action to appeal the decision of the defendant, Planning and Zoning Commission of the Town of Salisbury (Comm'n), to amend certain of its zoning regulations. The amended regulations pertain to the operation of an automobile race track at a site owned by the Park (Site). On May 16, 2016, the court, Moore, J., granted the motion of the Lime Rock Citizens Council, LLC (Council) to intervene. The court conducted a hearing on May 10, 2017, with an additional argument taking place on August 30, 2017. At that August argument, the parties agreed to allow the court to file its decision in this matter on or before October 16, 2017. On September 11, 2017, the parties submitted supplemental briefing based on issues that arose during the August argument. Thereafter, on September 25, 2017, the court indicated, by way of order, that additional argument was necessary and, on September 26, 2017, ordered the parties to supplement the record. The parties filed the requested supplementation on October 6, 2017, and the additional hearing was held on October 10, 2017. During that hearing, the court allowed both parties to further supplement the record by admitting documents into

Copies mailed 2/1/18

- · Reporter of Judicial Decisions
- · Carmody Torrance Sandak & Hennessey LLP · LeClairkyan a Professional Corporation · Shipman & Goodwin LLP

evidence, including a more complete version of the Comm'n's 1959 zoning regulations. For the reasons set forth below, the appeal is denied, in part, and sustained, in part.

TT

REGULATORY HISTORY

Given the nature of some of the arguments, this court finds it both useful and necessary to review the regulatory history related to use of the Site's race track. The court gleaned the following history from the administrative record and through judicial notice of pleadings in the following related cases: (1) Adams v. Vaill, Superior Court, judicial district of Litchfield, Docket No. CV-58-0015459-S, and the related appellate decision at 158 Conn. 478, 262 A.2d 169 (1969), including the appellate court file; (2) Lime Rock Foundation, Inc. v. Zoning Board of Appeals, Superior Court, judicial district of Litchfield, Docket No. CV-77-0016404-S; (3) Lime Rock Protection Committee v. Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-77-0016416-S; and (4) Lime Rock Protection Committee v. Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-78-0016920-S.

Regulation of the Site has taken three avenues: (1) a permanent injunction arising out of a nuisance lawsuit brought by neighbors of the Site against the owner; (2) a stipulated judgment resolving three appeals of decisions made by the Salisbury Zoning Board of Appeals; and (3) the enactment of zoning regulations. The zoning amendments at issue comprise, to some degree, a consolidation of these three paths.

¹ Volume A-496, Connecticut Supreme Court Records and Briefs, Part 1, A-F, October Term, 1969, 1-62.

Background Facts

Motor vehicle racing and other related activities, including camping, automobile shows, and demonstrations of driving speed and skill have been conducted at the Site since 1957. At the inception of such activities, the Town of Salisbury had no zoning regulations. In 1957, racing and related activities occurred seven days a week. The operation of the race track, existing as it did prior to the inception of zoning regulations, was a preexisting, nonconforming use.

R

Adams v. Vaill: The Injunction Action

In 1958, a private nuisance action, *Adams* v. *Vaill*, supra, Superior Court, Docket No. CV-58-0015459-S, was brought against B. Franklin Vaill, the owner of the Site, and The Lime Rock Corporation (LRC), the lessee of the Site and operator of the race track. The action was brought by twenty-five individuals, mostly residents and property owners in the village of Lime Rock, and two institutions, the Trinity Episcopal Church of Lime Rock (Church)³ and the Lime Rock Cemetery Improvement Association (Cemetery). The plaintiffs claimed that the use of the race track constituted a nuisance, and they sought to abate this nuisance by means of permanent injunctive relief. Given that the injunction is the original source of regulation at the Site, it is necessary to undertake a careful review of the allegations in *Adams*.

The plaintiffs alleged that, for more than twenty-five years prior to 1957, the village of Lime Rock was a "quiet, peaceful and secluded residential area" of Salisbury with little commercial activity. Starting in early 1957, LRC used the Site as a sports car race track, hosting

² Although the Town of Salisbury created a zoning commission in 1955, it did not adopt zoning regulations until June 8, 1959.

³ The Church was not an original plaintiff, but was added shortly after the complaint was served.

races and exhibitions almost every weekend when weather and driving conditions permitted. Even when no formal events took place, drivers used the track to test their cars and practice racing. This activity began as early as 9:00 a.m. and went as late as 11:00 p.m., and sometimes lasted for up to ten consecutive hours. "[C]onsiderable noise," arising from the racing activity, included the roar of car engines when accelerating at high and low speeds, generally "without mufflers or other devices to silence" the engine exhaust; the revving of "unmuffled engines of cars at a stand still;" the "loud screeching of tires and squealing of brakes;" the "noisy changing of gears;" and announcements emanating from loudspeakers and amplifiers. The noise could travel as far as two and one-half to three miles. While attending events at the track, racing fans drove their own cars recklessly and without consideration of the rights of others, "often with loud noises occasioned by operation with cut-outs or without mufflers." The attendees also sped and raced on public roads, and engaged in horn honking and other boisterous conduct. The racing fans created such heavy traffic that the plaintiffs were denied normal access to and from their homes. The fans violated the plaintiffs' property rights by trespassing on their land, turning vehicles on their lawns, throwing beer cans and other litter on private property, and "using [one plaintiff's] property to relieve calls of nature." This behavior continued despite complaints to the police. Noise associated with the racing activity prevented the plaintiffs from occupying their homes with comfort and, in some instances, forced some plaintiffs to either close all of their windows and "retire to the basement" or to leave their homes. The noise was "annoying, irritating and disturbing, both physically and emotionally," and caused some of the plaintiffs to be "seriously nervous and upset." The noise menaced the health of the plaintiffs, lowered property values, prevented homes from selling and being leased, and caused the Cemetery to padlock its grounds on race days.

The Church alleged that the arrival of racing fans "before, during and immediately after the hours of worship," and the attendant "noise, racket and behavior . . . intrude upon, disturb and interfere with the conduct of worship of said Church, deter some of its communicants from attending church services," and "hamper [churchgoers'] access to and egress from" the Church, thereby "endanger[ing] their safety." The Church further alleged that it could no longer schedule religious rites on race days, and that the rectory's inhabitants could not peacefully enjoy their home.

The foregoing allegations demonstrate that noise was the plaintiffs' primary, although not exclusive, grievance. On May 12, 1959, the court, *Shea, J.*, entered judgment for the plaintiffs by granting a permanent injunction. The court issued a memorandum of decision, setting forth its findings and holding that noise generated by the track's operation constituted a nuisance. More specifically, the court found that "[w]hen these races take place or when the track is in use, the noise and roar of car engines caused by the operation of the vehicles upon the track can be heard for a considerable distance away. The track is constructed with a number of sharp curves and the squealing of brakes, screeching of tires, and other noises emanating from the operation of the cars upon the track can be heard throughout the Village of Lime Rock." The court further found that noise from the loudspeaker announcing aspects of the races "can be heard for some distance away."

Notably, the court underscored the additional volume of noise that arose when car engines were not mufflered, finding that during "weekdays the engines of the cars which are operated upon the track are usually mufflered, but this is not uniformly true and the noise, of

⁴ The court rejected the plaintiffs' claims of motor vehicle violations and heavy traffic, finding that many witnesses commended the State Police for their work in defusing these issues. The court held that, "[a]t the present time there is little or no complaint about the traffic problem or the manner in which it is handled."

course, is much greater when the engines are not mufflered." The court also found that during "racing events or speed tests, and particularly on weekends, the events are often held with unmufflered engines. These events cover an extended period of time. On certain occasions they are carried on continuously for a period of hours. The noise and sounds, particularly when the vehicles are unmufflered, reach such intensity that they can sometimes be heard for some distance beyond the village depending upon the wind and atmospheric conditions."

After considering the legal standards relative to the creation of a nuisance, the court, once again, emphasized the impact of unmufflered racing on its decision: "In applying these principles of law to the case before us, it becomes evident at once that a single or isolated use of the race track does not constitute a nuisance in and of itself. The noise becomes irritating, annoying, and disturbing to the comfort of the community when the race track is used by unmufflered engines for an extended number of hours. In fact, there is little or no complaint to be made against the operations upon the track when it is used by vehicles which are mufflered." After finding that the "residents of Lime Rock often invite visitors and friends to spend the weekend there and to enjoy the peaceful surroundings of the beautiful countryside," and that the "operation of the race track on Sundays proves to be especially annoying and irritating to the plaintiffs," the court prohibited Sunday racing. The court then found that "the noise does not have the same effect on other days, and the track could be operated on every other day of the week provided, however, that the events with unmufflered engines should be limited in number and space of time."

Accordingly, the permanent injunction prohibited "[a]ll activity upon the track . . . on Sundays;" limited mufflered racing to weekdays between 9:00 a.m. and 10:00 p.m., except for

⁵ Notably, the court did not find that unmufflered racing created additional traffic, or enhanced air or light pollution because it was more popular than mufflered racing. This lack of findings is relevant to certain of the Comm'n arguments, which will be addressed by this court later in this memorandum of decision.

six days per year when racing could continue beyond 10:00 p.m.; and permitted unmufflered racing between specified hours only on Tuesdays and ten Saturdays each year (as well as the ten Fridays that preceded those ten Saturdays for the purpose of preparing for the Saturday races), and the following holidays between the hours of 9:00 a.m. and 6:00 p.m.: Memorial Day, the Fourth of July and Labor Day. The injunction also referred the parties to General Statutes § 14-80 (c) regarding what constituted "permissible mufflers."

C

Salisbury Zoning Regulations

Shortly after the Adams decision, on June 8, 1959, the Comm'n adopted zoning regulations and a zoning map. The zoning regulations placed the Site in the Rural Enterprise (RE) District, and allowed race tracks as a permitted, as of right use within the RE District.

Salisbury Zoning Regs., § 8.1.17. The Site was the only race track operating in the RE District. The regulations allowed a "track for racing motor vehicles, excluding motorcycles, to which admission may be charged, and for automotive education and research in safety and for performance testing of a scientific nature." Id. These regulations also permitted such accessory uses as "grandstands, judges' stands, automobile repair pits, rest rooms, lunch counters or stands ... use of the premises for automobile shows and exhibitions, for the sale of motor vehicles, automotive parts and accessories and fuels, for manufacturing and automotive repair incident to the other activities herein permitted, [and] may also include the production of television, motion picture or radio programs and the use of necessary lighting and sound equipment therefor." Id., § 8.1.17.7. Additionally, the regulations allowed racing "during such hours as are permitted by statute." Id. At that time, the controlling statute provided, in relevant part, that any "race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition ... may be

conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." General Statutes § 898c, as amended by Public Acts 1939, No. 23.

D

Modification of the Adam's Injunction

Even though the *Adams* injunction was permanent, it was, nonetheless, modified several times. The first modification occurred by way of a March 2, 1966 stipulation⁶ further limiting the use of the Site for racing and related activity. Specifically, the stipulation provided that the prohibition on Sunday racing applied to both "mufflered" and "unmufflered racing cars;" extended the Sunday prohibition to the "paddock areas;" added a definition of "racing car;" and further limited the Friday unmufflered race preparation by specifying that "no qualifying heats or races shall be permitted on such Fridays." Other activities, not part of the original permanent injunction, were incorporated, including a prohibition on revving or testing of any racing car engines on Saturdays and permitted holidays before 9:00 a.m. and after 6:00 p.m., except for the transportation of the vehicles to and from the paddock areas or on their trailers. Such transportation could not take place before 7:30 a.m. or after 7:30 p.m. The stipulation also banned the use of loudspeakers at the track before 8:00 a.m. and after 7:00 p.m.

The second modification resulted from the *Adams* plaintiffs' July 29, 1968 motion for modification to the 1966 version of the permanent injunction. The 1968 modification was sought

⁶ Neither the extant Adams v. Vaill Superior Court file nor the 1969 volume of the Supreme Court Records and Briefs, which contains the appellate record for the 1969 Supreme Court decision in Adams v. Vaill, includes an underlying motion to modify the injunction. The court, therefore, does not know whether the 1966 stipulation arose from motion practice or was simply an agreement among the parties that was placed before the court for its approval.

on the basis of a 1967 amendment to General Statutes § 14-80 (c), which expanded the mufflering requirement to all times and places rather than only when "operated upon a street or highway." See Adams v. Vaill, supra, 158 Conn. 481. The Adams plaintiffs argued that, based on this amendment, the court could modify the 1966 injunction to prohibit, at all times, the racing of unmufflered vehicles. Id., 482. The court agreed and the injunction was modified "to prohibit the operation and use of unmufflered motor vehicles on the Lime Rock race track," and the defendants were ordered to "cease and desist immediately from sponsoring the racing of said unmufflered vehicles." Adams v. Vaill, Superior Court, judicial district of Litchfield, Docket No. CV-58-0015459-S (August 28, 1968, Wall, J.); see Adams v. Vaill, supra, 482. This 1967 modification was upheld on appeal in 1969 by our Supreme Court, despite its acknowledgement that § 14-80 (c) had been amended in 1969 to allow unmufflered motor vehicle racing contests. Adams v. Vaill, supra, 482-84, 484 n.1.7

Ε

Appeals of Salisbury ZBA Decisions

Beginning in 1977, a series of appeals were taken from decisions of the Salisbury Zoning Board of Appeals' (ZBA) determination of what constituted "permitted activities" at the Site. The first such action, brought by the then-owner of the Site, the Lime Rock Foundation, Inc. (Foundation), appealed an August 5, 1977 decision of the ZBA upholding the Comm'n's limitation on the number of campers at the Site to 1,000 at any given time. *Lime Rock Foundation, Inc.* v. *Zoning Board of Appeals*, Superior Court, judicial district of Litchfield.

⁷ The Supreme Court cryptically noted that "[t]his subsequent amendment, however, does not render the present appeal moot since it appears that there is litigation pending, the outcome of which is dependent, at least in part, upon the legality of the existing injunction as modified." Id. Neither the existing Adams trial court file nor the Supreme Court Records and Briefs contain any motions or pleadings that would inform this court as to the nature of this "pending litigation," although the Supreme Court was certainly aware of it.

Docket No. CV-77-0016404-S. After the appeal was filed, the ZBA agreed to raise the limit to 1,500 campers at a time. Id. The Foundation claimed that the 1,500 person limitation was illegal, arbitrary, and constituted an abuse of discretion because the track was a "valid nonconforming use which cannot be limited in this manner." Id.

Almost immediately after the Foundation filed its appeal, the Lime Rock Protection Committee (Committee) and individual neighbors of the track sued the Foundation and the ZBA, also alleging that the ZBA's decision to raise the number of campers to 1,500 was illegal, arbitrary, and not supported by record evidence. Lime Rock Protection Committee v. Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-77-0016416-S. In this appeal, the plaintiffs alleged that the Comm'n, in an August 5, 1977 decision, issued a ruling that camping at the track was "a permitted use of said property" subject to the following limitations: (1) camping was confined to the infield; (2) camping could not include spectators; and (3) camping could not exceed more than 1,000 campers at a time. The plaintiffs further alleged that, after the Foundation appealed the August 5, 1977 decision, the ZBA modified said decision by (1) dispensing with the requirement that camping be confined to the infield; (2) allowing campers to include spectators; and (3) increasing the allowed number of campers at any one time to 1,500. The plaintiffs alleged that the ZBA acted illegally because (1) camping is not a permitted use in the RE Zone, where the Site is located, and the zoning regulations do not otherwise permit such a use and (2) the type of camping that existed prior to the 1959 zoning regulations was substantially different in nature, type and degree from that permitted by the ZBA, in that pre-zoning camping (a) did not include spectators; (b) was limited to the infield; (c) was limited to far less than 1,500 campers; (d) took place over shorter time periods; and (e) was far less objectionable in nature. The plaintiffs further claimed that the ZBA's action was illegal

because it permitted a use not in harmony with the "general purpose of the Zoning Regulations of the Town of Salisbury and is contrary to public policy," and did not attempt to conserve the public health, safety, convenience, welfare and/or property value of the plaintiffs and of other Town residents. Finally, the plaintiffs alleged that the ZBA's action was undertaken pursuant to 'defective notice.

In the third action, filed in 1978, the Committee and two individuals brought another action against the Foundation and the ZBA. Lime Rock Protection Committee, Inc. v. The Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-78-0016920-S. In the third action, the plaintiffs asserted that, at their request, the Comm'n had issued, on May 20, 1975, an order enforcing a zoning regulation that required a buffer strip between the race track and its neighbors, but that the Foundation did not comply with this order and that the Comm'n never enforced the order. The plaintiffs took an appeal seeking enforcement of the order, which was denied by the ZBA. The plaintiffs alleged that the actions of the ZBA were illegal because (1) it failed to require the Comm'n to enforce the buffer strip regulation; (2) its action was not supported by record evidence; (3) it permitted a use not in harmony with the general purpose of the zoning regulations and violative of public policy; (4) it failed to consider public health, safety, convenience, welfare and/or property values of the plaintiffs and other Salisbury residents; and (5) it provided defective notice.

All three appeals were resolved by one stipulation for judgment dated May 31, 1979, with judgment entered in each file on September 19, 1979 (ZBA Judgment). The stipulation did not mention any provision of the zoning regulations, but simply recited that the track's owner was permitted to use the Site for camping for an unlimited number of spectators and participants at any events held there, subject to the following restrictions: (1) camping was limited to the

infield; (2) no non-official motor vehicles were allowed to be parked in the outfield, except between 6:00 a.m. and 10:00 p.m.; (3) the track entrance running past the Reed Williams property was closed between 11:00 p.m. and 6:00 a.m. to all camping traffic; and (4) the 1978 case (Docket No. CV-78-0016920-S) was dismissed with prejudice.

The judgment in each of the two 1977 cases (Docket Nos. CV-77-0016404-S, CV-77-0016416-S), although identical in all significant respects, also augmented the stipulation by construing "the nonconforming use" of the Site to permit camping by an unlimited number of spectators and participants as an accessory use to permissible car racing events subject to certain restrictions, including: (1) camping and camping vehicles were confined to the infield of the race track; (2) no motor vehicles were to be parked in the race track outfield between 10:00 p.m. and 6:00 a.m., except for those on official track business, which had to be parked in the parking lot area adjacent to the track office; and (3) the back road and the race track entrance, which abutted the Reed Williams property were to be closed, between 11:00 p.m. and 6:00 a.m., to all traffic except for emergency and service vehicles.

F

Zoning Regulation Amendments

Under the 1967 zoning regulations, racing at the Site was a permitted use but, in 1975, over the Site's objection, the Comm'n voted to change it to use by special permit. There is no evidence, however, that since this change, the Park or any of its predecessors have ever sought a special permit for its main uses, i.e., racing and exhibitions. Moreover, despite this change, the Site maintained its character as a preexisting, nonconforming use because it was in operation prior to the enactment of zoning regulations.

In 1985, the zoning regulations were again amended. Significantly, at this time, the basis for the allowed racing times pivoted from the relevant state statute to the permanent injunction. Unlike the 1959 regulations, which allowed racing during the hours permitted by statute, the 1985 amendment prohibited racing "except during such hours as are permitted by Court Order dated 5/12/59."

The last version of the zoning regulations prior to the amendments at issue, the May 26, 2013 regulations, specified that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." The 2013 regulations did not include a specific reference to days of operation. Moreover, the 2013 regulations did not incorporate, by reference, the ZBA Judgment and did not contain any provisions as to camping, parking, or traffic on access ways to the track.

The 2015 amendments were proposed by the Comm'n on or before July 20, 2015, and adopted on November 16, 2015. Sections 221.1 and 221.3 of these amendments⁸ are the subject of the present appeal. These sections will be set forth in more detail in section IV (A) and (C) of this memorandum of decision.

⁸ Several of the 2015 amendments are not at issue in the present appeal, including clarifying and expanding a list of various uses that are incidental and accessory to a race track use; modifying the Table of Uses to specify that a race track is a use allowed by special permit in the RE District; adding a definition of "motor vehicle" that is derived from state statute; and providing that certain temporary uses associated with racing, even though not incidental or accessory thereto, may be allowed by special permit. Moreover, initially, the 2015 amendments also added Section 221.6, a severability clause, providing that, if one portion of the regulations were found by a court to be invalid, all of the other provisions would be invalid as well. The Park challenged this section on appeal, and the Comm'n, in a public hearing on March 30, 2016, repealed Section 221.6. Therefore, Section 221.6 is no longer before the court on this appeal.

STANDARD OF REVIEW

As a threshold matter, aggrievement is a prerequisite to maintaining a zoning appeal, and the Park bears the burden of proof that it is aggrieved by the Comm'n's decision to amend its regulations. Unless an appellant pleads and proves aggrievement, the case must be stricken for lack of subject matter jurisdiction. In the present case, the parties have stipulated to facts which allow this court to make a finding that the Park is aggrieved. See *Hughes* v. *Town Planning* & *Zoning Commission*, 156 Conn. 505, 509, 242 A.2d 705 (1968); *Hendel's Investors Company* v. *Zoning Board of Appeals*, 62 Conn. App. 263, 270-71, 771 A.2d 182 (2001); R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 32:3.

A local zoning commission, acting in a legislative capacity, has broad authority to enact or amend zoning regulations. Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, 220 Conn. 527, 542, 600 A.2d 757 (1991); Arnold Bernhard & Co. v. Planning & Zoning Commission, 194 Conn. 152, 164, 479 A.2d 801 (1984). "Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change." (Internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 543. The broad discretion of local zoning authorities acting in their legislative capacity is not, however, unlimited. Damick v. Planning & Zoning Commission, 158 Conn. 78, 83, 256 A.2d 428 (1969). "Zoning is an exercise of the police power. . . . As a creature of the state, the . . . [town . . whether acting itself or through its planning commission,] can exercise only such powers as are expressly granted to it, or such powers as are necessary to enable it to discharge the duties and

carry into effect the objects and purposes of its creation. . . . In other words, in order to determine whether the regulation in question was within the authority of the commission to enact, we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment. . . . If the legislation is [a zoning] ordinance, it must comply with, and serve the purpose of the statute under which the sanction is claimed for it. . . . A local zoning commission is subject to the limitations prescribed by law [and] [t]he power to zone [is] not absolute but [is] conditioned upon an adherence to the statutory purposes to be served." (Citations omitted; internal quotation marks omitted.) Builders Service Corp. v. Planning & Zoning Commission, 208 Conn. 267, 274-75, 545 A.2d 530 (1998).

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Judicial review of a decision to amend zoning regulations is limited. Protect

Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning

Commission, supra, 220 Conn. 542. "[I]t is not the function of the court to retry the case.

Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached." (Internal quotation marks omitted.) Id., 542-43. A local zoning board's "legislative discretion is 'wide and liberal,' and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." (Internal quotation marks omitted.) Id., 543; see Stiles v. Town Council, 159 Conn. 212, 218-19, 268 A.2d 395 (1970) ("[c]ourts cannot substitute their judgment for the wide and liberal discretion vested in the local zoning authority when it is acting within its prescribed legislative powers"). "Courts will not interfere with . . . local legislative decisions unless the action taken is

clearly contrary to law or in abuse of discretion. . . . Within these broad parameters, [t]he test of the action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan, General Statutes § 8-2 . . . and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2" (Citations omitted; internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 543-44; see Arnold Bernhard & Co. v. Planning & Zoning Commission, supra, 194 Conn. 159 ("General Statutes § 8-2 delegates broad authority to municipalities to enact local zoning regulations").

"Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. . . . The zone change must be sustained if even one of the stated reasons is sufficient to support it. . . . The principle that a court should confine its review to the reasons given by a zoning agency does not apply to any utterances, however incomplete, by the members of the agency subsequent to their vote. It applies where the agency has rendered a formal, official, collective statement of reasons for its action. . . . [H]owever . . . the failure of the zoning agency to give such reasons requires the court to search the entire record to find a basis for the commission's decision." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544.

Applying these principles to the present case, the scope of this court's review of the 2015 amendments to the zoning regulations is, therefore, quite limited. This court must uphold the amendments and deny the appeal if even one of the Comm'n's officially proferred reasons is

reasonably supported by the record, provided that the amendments are based upon the statutory purpose of zoning and are neither arbitrary nor illegal. While this formulation sounds simple, its application in the preset case is complex, especially with regard to the Park's preemption arguments concerning Sunday racing and the regulation of noise.

IV

PARTIES' ARGUMENTS

The Park asserts that the Comm'n acted illegally, arbitrarily, capriciously and in abuse of its discretion in the following ways: (1) The limitations on days and hours of racing and race car activities violate and are preempted by General Statutes § 14-164a ("motor vehicle racing"); (2) the amendments attempt to regulate noise in an improper fashion; (3) no record evidence supports the amendments; (4) the amendments violate General Statutes § 8-2 (a) because they are not in conformity with the Town's comprehensive plan; and (5) the amendments constitute illegal spot zoning, target a single property owner and regulate the user, not the use, of the property. The Park also argues that the Comm'n acted in excess of its statutory authority in three ways. First, it improperly "cut and pasted" provisions from the injunctive orders and the ZBA Judgment into the 2015 amendments because it considered these provisions already part of the zoning scheme and to which the parties were previously subject. Accordingly, the Park asserts, the Comm'n did not allow testimony on the substance of the "cut and pasted" provisions.

Second, the amendments are not supported by any legitimate land use basis, and third, by

⁹ Although the Park originally mounted other attacks on the amendments, not all were briefed, including an improper notice argument and an argument that the new regulations required the Park to seek a special permit for activities it undertook prior to these amendments. The court will not consider these abandoned arguments.

requiring a special permit to amend the regulations, the Comm'n specifically exceeded its statutory authority under § 8-3 (c).

In contrast, the Comm'n argues that the amendments concerning the track's hours of operation are not preempted by or irreconcilably in conflict with General Statutes § 14-164a; the amendments do not constitute illegal noise regulations, and, in fact, the limitations on unmufflered racing are not even attempts to regulate noise; the amendments have support in the administrative record; there is a legitimate land use basis for the amendments; it acted within its authority in addressing how certain standards in the regulations may be amended; the Park has not sustained its burden to prove that the amendments do not conform to the Town's comprehensive plan; and the amendments do not constitute spot zoning, target a single property owner, or seek to regulate a user rather than a use.

Additionally, the Council contends that several of the Park's claims are abandoned for failure to brief; the Park's prior stipulation to limits on Sunday racing and hours of operation act as a waiver to any current challenge thereto; the Comm'n's actions in limiting Sunday racing are not preempted by General Statutes § 14-164a; the amendments do not impermissibly regulate noise; and state law allows the Comm'n to regulate the use of the track by special permit.

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DISCUSSION

The Park's arguments that concern general land use issues, such as those pertaining to a legitimate land use basis for the amendments and record evidence in support of the amendments can be dealt with summarily. Many of these arguments spring from the Park's perception that the Comm'n merely cut and pasted provisions from the permanent injunction and the ZBA Judgment into the zoning regulations.

At first blush, these arguments seem to have some merit. Comments of individual Comm'n members, made prior to the formal vote in favor of the amendments, reveal that some members felt that their charge involved nothing more than cutting and pasting. Based on the belief of some Comm'n members that they were simply codifying the existing zoning scheme, one Comm'n member issued stern warnings at the beginning of the public hearings that the Comm'n would not hear any testimony regarding the impact of the Park on townsfolk. This member evinced a belief that all provisions of the amendments before them were already incorporated by reference into the existing zoning regulations. As a result, the action being taken by the Comm'n was simply the administrative task of spelling out each such provision in the regulations to obviate the need for an individual to obtain a copy of the most recent injunction from the Superior Court or the Town Clerk's office to find out what was incorporated by reference into the regulations. This belief, however, was mistaken. While the 2013 regulations did incorporate the injunction's restrictions on hours of racing, those regulations did not incorporate the injunction's restrictions on days of racing, or the 1979 ZBA Judgment's restrictions on camping and traffic.

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Nonetheless, these erroneous beliefs of individual members of the Comm'n are not a sufficient basis upon which this court could sustain the Park's appeal. First, despite the Comm'n's expressed intent to limit the testimony, it, in fact, took voluminous evidence and public commentary related to the essential issues at dispute in the present appeal, including, but not limited to, noise, traffic, and days of racing. Second, this court must disregard comments by Comm'n members during the public hearing, prior to the formal vote to amend. See *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544. Third, the Comm'n's formal statement of reasons contains at

least one legitimate land use basis for the amendments under § 8-2, to wit, that the proposed amendments support public health and safety, and preserve property values. Persuasive evidence was taken during the public hearing to support this reason and to underscore the impact that the Site has on the value of surrounding properties. "If any one [reason] supports the action of the commission, the plaintiff must fail in his appeal." Zygmont v. Planning & Zoning Commission, 152 Conn. 550, 553, 210 A.2d 172 (1965). Section 8-2 expressly recognizes that the promotion of health and safety and the preservation of property values are two purposes of zoning regulations. 10 "Zoning legislation has been upheld with substantial uniformity as a legitimate subject for the exercise of the police power when it has a rational relation to the public health, safety, welfare and prosperity of the community and is not in plain violation of constitutional provision, or is not such an unreasonable exercise of this power as to become arbitrary, destructive or confiscatory." (Internal quotation marks omitted.) Builders Service Corp. Inc. v. Planning & Zoning Commission, supra, 208 Conn. 283. Accordingly, this court finds that the foregoing articulated reason for the 2015 amendments is valid, is reasonably supported by the record and is pertinent to the considerations the Comm'n was required to apply under the zoning regulations. See Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 33:2.

Therefore, the Park cannot succeed on its arguments that (1) the "cutting and pasting" of the injunction into the regulations was improper; (2) the Comm'n generally acted outside of its statutory authority; (3) no legitimate land use basis was provided for the amendments; and (4) no record evidence supported the amendments.

¹⁰ Section 8-2 (a) provides, in relevant part, that zoning regulations "shall be designed to . . . promote health and the general welfare" and that "[s]uch regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings"

Similarly, the court finds no merit in the Park's arguments that the amendments constitute illegal spot zoning or that the Park was singled out for unfair treatment. Spot zoning is "the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood. . . . Two elements must be satisfied before spot zoning can be said to exist. First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole. ... The vice of spot zoning lies in the fact that it singles out for special treatment a lot or a small area in a way that does not further such a [comprehensive] plan." (Internal quotation marks omitted.) Gaida v. Planning & Zoning Commission, 108 Conn. App. 19, 32, 947 A.2d 361, cert. denied, 289 Conn. 922, 958 A.2d 150 (defendant's petition for cert.), 289 Conn. 923, 958 A.2d 151 (plaintiffs' cross-petition for cert.) (2008); see Delaney v. Zoning Board of Appeals, 134 Conn. 240, 245, 56 A.2d 647 (1947) ("spot zoning,' . . . if permitted, must often involve unfair and unreasonable discrimination and necessarily defeat, in large measure, the beneficial results of zoning regulation"). "Spot zoning is impermissible in this state." (Internal quotation marks omitted.) Gaida v. Planning & Zoning Commission, supra. "The obvious purpose of the requirement of uniformity in the regulations is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike." (Internal quotation marks omitted.) Id., 33.

On this appeal, the Park did not sustain its burden to convince the court that the amendments constituted the reclassification of a small area of land so as to disturb the tenor of the surrounding neighborhood. *Gaida*, supra. Moreover, this court finds that the 2015 amendments are in conformity with the Town's comprehensive plan.

"A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties." (Internal quotation marks omitted.)
Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 220 Conn. 551. "In the absence of a formally adopted comprehensive plan, a town's comprehensive plan is to be found in the scheme of the zoning regulations themselves." (Internal quotation marks omitted.) Id. Here, the conclusion reached by the Comm'n that the 2015 amendments were consistent with the Town's comprehensive plan is reasonably supported by the record. Moreover, public health and safety, and preservation of property values are clearly within the purposes contemplated by § 8-2.

The Park did not sustain its burden to convince the court that the amendments were discriminatory or out of harmony with the comprehensive plan of zoning adopted to serve the needs of the town.

For these reasons, the court finds that the Park did not sustain its burden to prove that the regulations as a whole constituted spot zoning or were discriminatory.

The court will now address, in turn, the Park's arguments that the amendments are, in part, violative of, or preempted by, a state statute; an unlawful regulation of noise; and in excess of the Comm'n's statutory authority.

Although the Park also argued that the amendments were not in conformance with the Town's Plan of Conservation and Development, the Comm'n heard record evidence adduced from Martin J. Connor, AICP, to the contrary. The Comm'n found this evidence to be credible and persuasive and the court cannot substitute its judgment for that of the Comm'n in regard to this issue. *Stiles*, supra.

Days of Racing and Preemption

It is the Park's position that the restrictions placed on days of racing and racing activities violate and are preempted by General Statutes § 14-164a (a). The Park argued that the amended regulations "include extensive illegal restrictions on days and hours of 'races," and specifically, that "Section 221.1 (2) restricts 'activity' with 'unmufflered racing car engines' to Tuesday afternoons and ten Fridays and Saturdays."

Before addressing the merits of this argument, the court will first tackle the argument made by the Council and the Comm'n that the Park waived its right to oppose the amendments that prohibit Sunday racing or racing on other days of the week. This court finds no merit in these arguments. First, the argument by the Council and Comm'n that the 2013 regulations limited only days of racing is clearly rebutted by its plain language that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." Thus, the 2013 regulations limited hours, but not days, of racing. This court finds equally unpersuasive the Council's argument that the Park waived its right to contest the Sunday racing amendments because it, or its predecessors, agreed, as part of previous amendments to the injunction order, to limitations on Sunday racing. Putting aside for the moment the very real issue of whether the Park's predecessors had the legal authority to waive the Park's rights to assert legal arguments, the Park's predecessors did, in fact, fight, albeit unsuccessfully, for Sunday racing in the initial Adams hearing. The issue of Sunday racing was decided by Judge Shea rather than stipulated to by the Park's predecessor in interest. Moreover, the stipulated amendments to the injunction order that came later did not relate to the fundamental issue of

Sunday racing. To the extent the Park or its predecessor stipulated to other, unrelated restrictions on the use of the Site, such as number of campers, that stipulation cannot bind the Park in perpetuity to a prohibition of Sunday racing. Additionally, as the court will discuss at the end of this decision, regulation that results from a private nuisance lawsuit is different in nature from that which results from zoning regulations. The court finds that the Park has not waived its rights to oppose the 2015 amendments that prohibit Sunday racing or racing on other days of the week.

The Park's substantive argument is that the prohibition on Sunday racing, set forth in section 221.1 of the 2015 amendments is either preempted by, or violates, General Statutes §14-164a. Our Supreme Court has provided extensive guidance on the law of preemption. "The State may regulate any business or the use of any property in the interest of the public welfare or the public convenience, provided it is done reasonably." (Internal quotation marks omitted.) Modern Cigarette, Inc. v. Orange, 256 Conn. 105, 118, 774 A.2d 969 (2001). "[I]n determining whether a local ordinance is preempted by a state statute, [the court] must consider whether the legislature has demonstrated an intent to occupy the entire field of regulation on the matter or whether the local ordinance irreconcilably conflicts with the statute." Id., 119. "Whether the legislature has undertaken to occupy exclusively a given field of legislation is to be determined in every case upon an analysis of the statute, and the facts and circumstances upon which it intended to operate." (Internal quotation marks omitted.) Bencivenga v. Milford, 183 Conn. 168, 176, 438 A.2d 1:174 (1981). "Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives." Modern Cigarette, Inc. v. Orange, supra. "Therefore, [t]hat a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through the enactment of an ordinance,

so long as there is no conflict with the state legislation." Id. "Whether a conflict exists depends on whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes." Id., 120.

To decide whether the amendments are preempted by or violate General Statutes §14-164a, the court must review the language of each.

As set forth immediately below, the 2015 amendments address the days of the week on which motor vehicle racing may take place as follows. The 2015 amendments clearly prohibit all racing on Sunday. In addition to the Sunday prohibition, the 2015 amendments also prohibit mufflered racing on Saturdays in the following way. The amendments state that "[n]o motor vehicle races shall be conducted on any track except in accordance with the following parameters...." and then proceed to state that activity with mufflered car engines shall be permitted "on any weekday." Weekdays include Mondays through Fridays. Therefore, no mufflered race activity may take place on Saturdays. The 2015 amendments also place extensive limitations on the days of the week on which unmufflered racing can take place. Significantly, unmufflered racing may only take place, for example, on ten Saturdays per calendar year.

Because mufflered racing is only permitted on weekdays, and not, therefore, on Saturdays and because unmufflered racing may only take place on ten Saturdays in one year, the regulations operate to limit car racing to ten Saturdays per year.

Section 221.1 provides, in relevant part, as follows:

A track for racing motor vehicles, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the issuance of a special permit in compliance with the procedures and standards of these regulations and also subject to the following:

- (a) No motor vehicle races shall be conducted on any such track except in accordance with the following parameters [footnote 1 is then inserted which reads as follows: FN 1. The parameters set forth herein are identical to those set forth in the Amended stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield), which parameters were previously incorporated by reference in the zoning regulations]:
- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows: (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year. (B) Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows: (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m. (B) On Saturdays, not more than ten (10) in number each calendar year, between the hours of 9:00 a.m. and 6:00 p.m. (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays. (D) In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then said "rain date and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above. (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m. (i) In the event any of the holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited. (ii) In the event any of said holidays. falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes. (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmufflered activity beyond ten (10) as provided in Paragraph b) above.

The court now moves to review the language of General Statutes §14-164a. The parties sharply disagree on the meaning of this statute. Accordingly, this court begins its preemption

analysis by gleaning the meaning of General Statutes § 14-164a through the familiar process of statutory interpretation.

"The process of statutory interpretation involves a reasoned search for the intention of the legislature In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case." (Internal quotation marks omitted.) Cox Cable Advisory Council v. Dept. of Public Utility Control, 259 Conn. 56, 63, 788 A.2d 29, cert. denied, 537 U.S. 819, 123 S. Ct. 95, 154 L. Ed. 2d 25 (2002). In seeking to determine that meaning, General Statutes § 1-2z directs us to first consider the words of the statute. State v. Heredia, 310 Conn. 742, 756, 81 A.3d 1163 (2013). "We seek the intent of the legislature not in what it meant to say, but in what it did say." (Internal quotation marks omitted.) Sanzone v. Board of Police Commissioners, 219 Conn. 179, 187, 592 A.2d 912 (1991). "[T]he actual intent, as a state of mind, of the members of a legislative body is immaterial, even if it were ascertainable." (Internal quotation marks omitted.) Id.

"If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) State v. Heredia, supra, 310 Conn. 756. "When a statute is not plain and unambiguous, we also look for interpretative guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) Id.

In accordance with General Statutes § 1-2z, this court begins its analysis with the text of General Statutes § 14-164a (a): "No person shall operate a motor vehicle in any race, contest or

demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to to the provisions of any city, borough or town ordinances." Although mindful of the axiom that no sentence in a statute can be read in isolation, *Lackman v. McAnulty*, 324 Conn. 277, 287, 151 A.3d 1271 (2016), a careful examination of the three individual sentences in the context of the other sentences found in this portion of subsection (a) will help unlock the meaning of subsection (a).

The first sentence states that "[n]o person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section."

The second sentence provides that "[s]uch race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday." The statute does not define the word "such," but, in accordance with General Statutes § 1-1 (a), this court looks to "the common understanding expressed in dictionaries in order to afford the term its ordinary meaning." Lackman v. McAnulty, supra, 324 Conn. 287. "The word 'such' has been construed as an adjective referring back to and identifying something previously spoken of; the word naturally, by grammatical usage, refers to the last antecedent." (Internal quotation marks omitted.) Id. "The accepted dictionary definitions of 'such' include 'having a quality already or just specified,' 'previously characterized or specified,' and 'aforementioned.'" (Internal quotation marks omitted.) Id. Mindful of the dictionary definition, and when read contextually

and in accordance with applicable grammatical rules, "such race or exhibition" refers the reader back to the kinds of "race" and "exhibition" described in the preceding sentence. Quite clearly then, "such race or exhibition" in the second sentence refers to "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition," as stated in the first sentence. Further, the word "may" has several functions, and in the context of the second sentence, the word "may" denotes a grant of statutory authority. See Black's Law Dictionary (8th Ed. 2004) p. 1000 (defining "may" as "[t]o be permitted to"). Harmonizing the first and second sentences, it is permissible to conduct a race, or any contest or demonstration of speed or skill with a motor vehicle at any reasonable hour of any week day or after twelve o'clock noon on any Sunday.

The third sentence provides that "[t]he legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." The construction of this third sentence requires this court to seek guidance from traditional rules of English grammar. See, e.g., *Indian Spring Land Co. v. Inland Wetlands & Watercourses Agency*, 322 Conn. 1, 14-16, 145 A.3d 851 (2016). Sentence three consists of two clauses: an independent clause ("[t]he legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday") that, were it not for the second clause; could stand alone as a complete thought, and a subordinate, adverb clause ("provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances") that is dependent upon the main clause for its meaning and thus cannot stand by itself. See B. Garner, The Red Book: A Manual on Legal Style (2d Ed. 2006) §

10.48, pp. 179-80. The relationship between the two clauses is shown by the subordinating conjunction "provided" and signals that the subordinate, adverb clause places a condition on the operation of the independent clause. See Black's Law Dictionary, supra, p. 1261 (defining "provided" as a conjunction meaning "[o]n the condition or understanding;" or "[e]xcept").

Thus, application of the normal rules of English grammar dictates the following construction: a local legislative body has the authority to issue a permit allowing a race or exhibition to be held prior to 12 p.m. on Sunday, but this authority is limited by the condition that "such race or exhibition" cannot be held in violation of any local ordinance. Finally, careful interpretation leads this court to conclude that the adjective "such" in the subordinate clause of sentence three refers the reader back to its immediate antecedent, the "race or exhibition" that may be held before noon on Sunday referred to in the independent clause of the third sentence. Lackman, supra.

Consequently, by its plain language, General Statutes § 14-164a (a) allows a race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition to be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. It further allows a local legislative body to issue a permit authorizing a race or exhibition to be held prior to 12 p.m. on Sunday. However, that grant of authority to the local legislative body is limited by the condition that a race or exhibition can only be conducted prior to 12 p.m. on Sunday if it does not violate any local ordinance.

Contrary to the Comm'n's argument, there is no reasonable construction of General Statutes § 14-164a (a) that results in the subordinate, adverb clause in the third sentence ("provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances") placing a condition on the operation of the second sentence ("Such

race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday"). The plain language of a statute can be revealed by the legislature's choice of sentence structure and use of punctuation. See, e.g., *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, supra, 322 Conn. 14-16; see also *Lieb* v. *Dept. of Health Services*, 14 Conn. App. 552, 559, 542 A.2d 741 (1988) ("courts must presume that the legislature incorporated the purpose of the statute in every sentence, clause, phrase and item of punctuation of the statute"). Indeed, the plain meaning of a statute "will typically heed the commands of its punctuation." (Internal quotation marks omitted.) *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, supra, 14.

Here, the drafters clearly created two sentences, separated by a period for punctuation. By use of a period, each sentence contains an independent, complete thought. The grammar, syntax and punctuation of subsection (a) compel the conclusion that the drafters did not intend for sentence three's subordinate clause to be carried past its intended destination, i.e., the independent clause that comes before the subordinate clause in the third sentence, so as to modify or limit anything in the second sentence. By use of the end punctuation, the period, the legislature created a distinction between the statutory authorization to conduct races and exhibitions at reasonable times, and the power of local legislative bodies to regulate Sunday racing prior to noon. If the legislature had intended to vest local legislative bodies with the power to regulate all days and times of racing, it would have drafted the statute differently. See Windels v. Environmental Protection Commission, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly); see, e.g., Indian Spring Land Co. v. Inland Wetlands & Watercourses Agency, supra, 322 Conn. 16 (legislature could have used comma to separate terms if it intended a different result). This court is constrained to read the statute as written, and,

as dictated by its punctuation, structure and grammar, General Statutes § 14-164a (a) does not allow a local legislative body to limit the days and times of racing, other than to allow racing before noon on Sunday on the condition that such earlier racing time complies with local ordinances.

This conclusion is buttressed by the evolution of General Statutes § 14-164a over time, and by the legislative history of the language at issue in this case. Originally enacted in 1935 as General Statutes § 898c, the statute did not address days or times of racing but provided only that "[n]o person shall operate a motor vehicle in any race or speed contest, open to the public and to which an admission fee is charged, unless the commissioner of state police shall have issued a certificate approving such race or contest."

In 1939, the legislature amended the statute to provide, in more specific detail, that any person desiring to manage, operate or conduct a race or exhibition was required to make an application in writing to the commissioner of state police, setting forth in detail, inter alia, the time of the proposed race or exhibition. See Public Acts 1939, No. 23. The 1939 revision also provided the commissioner of state police with the authority to "issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances." Public Acts 1939, No. 23.

The clause, "which may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday," is non-restrictive, as evidenced by both the introductory term "which" and its separation from the beginning and end of the sentence by commas. ¹² See W. Strunk Jr. & E.B. White, The Elements of Style (3d Ed. 1979), pp. 3-5. As it is non-restrictive, the clause provides a supplemental, non-essential description of the commissioner's authority to issue a permit naming a definite date for a race or exhibition, and could be removed without changing the basic meaning of the subject-predicate combination. See W. Strunk Jr. & E.B. White, supra, pp. 3-5 (non-restrictive clauses do not limit or define, but merely expand upon the meaning of the words to which they relate); B. Garner, The Redbook: A Manual on Legal Style, supra, §§ 1.6, 10.20, pp. 6, 156-58; see also *United States* v. *Indoor Cultivation Equipment*, 55 F.3d 1311, 1315 (7th Cir. 1995) ("Congress's use of the pronoun 'which' is significant; it introduces a nonrestrictive clause . . . that does not limit the meaning of the word it modifies").

The next clause – "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances" – functions solely as a dependent, adverb clause modifying the independent clause ("may issue a permit naming a definite date for such race or exhibition"). Specifically, its purpose is to modify the verb "may issue" by limiting the commissioner's authority to issue a permit for a race or exhibition. See B. Garner, The Redbook: A Manual on Legal Style, supra, § 10.39, p. 173-74 (adverbs modify verbs to explain more about the action); see generally *Wellington Underwriting Agencies, Ltd.* v. *Houston Exploration Co.*, 267 S.W.3d 277, 288 (Tex. App. 2008), aff'd, 352 S.W.3d 462 (Tex. 2011) (interpreting dependent, adverb clause).

¹² Indeed, that the words "and it" can be substituted for "which" confirms that the clause is nonrestrictive – the commissioner of state police . . . may issue a permit naming a definite date for such race or exhibition <u>and it</u> may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday. See generally *Commonwealth* v. *Kenehan*, 12 Pa. D. & C. 585, 593 (Pa. Ct. Common Pleas 1929) (clause is nonrestrictive if "and it" or "and their" can be substituted for the relative pronoun).

By this analysis, the 1939 statute vested the commissioner of state police with the authority to issue a permit allowing races or exhibitions at reasonable times and days, but he could not issue a permit allowing a race or exhibition on a day or at a time that was contrary to any local ordinances. In other words, in 1939, the time and date of a race or exhibition could be limited by local ordinances.

Amendments in 1998, however, significantly altered both the substance and meaning of the statute. To demonstrate how the statute was altered, the legislature placed brackets around the omitted content while capitalizing added content:

The Commissioner of Motor Vehicles . . . may issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. [, provided] THE COMMISSIONER, WITH THE APPROVAL OF THE LEGISLATIVE BODY OF THE CITY, BOROUGH OR TOWN IN WHICH THE RACE OR EXHIBITION WILL BE HELD, MAY ISSUE A PERMIT ALLOWING A START TIME PRIOR TO TWELVE O'CLOCK NOON¹³ ON ANY SUNDAY, PROVIDED no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

Public Acts 1998, No. 98-102, p. 787.

This court cannot discount the drafters' placement of a period after "Sunday," thereby liberating the authority of the commissioner to issue a permit allowing races or exhibitions at any reasonable hour of any week day or after twelve o'clock noon on any Sunday, and giving it grammatical independence. Possibly of even more significance was making the phrase, "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances," dependent upon a newly created main clause ("the commissioner, with the approval of the legislative body of the city, borough or town in which the race or exhibition will be held, may issue a permit allowing a start time prior to twelve o'clock noon on

¹³ By revisions in 1975, "two o'clock in the afternoon of any Sunday" was changed to "twelve o'clock noon on any Sunday." Public Acts 1975, No. 75-404, pp. 398-99.

any Sunday") for its meaning. By these modifications, it is impossible for the sentence, "[t]he commissioner of motor vehicles . . . may issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday," to be modified by the clause, "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances."

"When the legislature amends the language of a statute, it is presumed that it intended to change the meaning of the statute and to accomplish some purpose." State v. Johnson, 227 Conn. 534, 543, 630 A2d 1059 (1993); cf. Bassett v. City Bank & Trust Co., 115 Conn. 393, 400-01, 161 A.852 (1932) (legislature may modify phrase of statute to simplify or condense the statutory language and not effect a substantive change). As it relates to General Statutes § 14-164a (a), to infer that the amendments were not intended to change the meaning of the statute would be to treat the inclusion of the new language as mere surplusage, a construction of the statute that clearly should be avoided, Segal v. Segal, 264 Conn. 498, 507, 823 A.2d 1208 (2003), and to ignore the change in punctuation. See People ex rel Krulish v. Fornes, 175 N.Y. 114, 121, 67 N.E. 216 (1903) (O'Brien, J., concurring) ("[p]unctuation is what gives virility, point and meaning to all written composition. . . . A change in punctuation is frequently as material and significant as a change in words" (citation omitted)).

The materiality of the revisions is a significant indication that it was the intent of the legislature to substantively change the meaning of General Statutes § 14-164a (a) from its prior 1939 version. The alterations in phraseology and change in punctuation cannot be attributed to a desire to condense or simplify the law, or to improve the phraseology, nor can the alterations be construed to reflect nothing more than corrections of inaccurate or superfluous punctuation. See Bassett v. City Bank & Trust Co., supra, 115 Conn 400-01; 82 C.J.S. § 332 (2009). The

foregoing revisions are more than grammatical sleights of hand, but reflect a significant change in the meaning of the provision.

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Returning now to the question of preemption, it is apparent that the legislature intended local authorities to have some input regarding, inter alia, reasonable hours of racing on week days and start times for Sunday racing. As such, the legislature has not demonstrated an intent to occupy the entire field of regulation on hours of racing to the exclusion of local regulations. See, e.g., *Parillo Food Group, Inc.* v. *Board of Zoning Appeals*, 169 Conn. App. 598, 151 A.3d 864 (2016) (legislature did not intent to occupy the entire field of regulation under liquor control act, but intended municipalities and local zoning board to have some input regarding the location of establishments that sell alcohol and conditions relating to the operation of those businesses).

However, as General Statutes § 14-164a (a) is now drafted, ¹⁴ it does not allow a local legislative body to limit the days and times of racing, other than to allow racing before noon on Sunday so long as the earlier time complies with local ordinances. As such, those portions of section 221.1.a that provide for any restriction on the days of the week when "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition" can be held (other than before noon on Sunday) irreconcilably conflict with General Statutes § 14-164a. "A test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes; if so, there is a conflict." *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 221, 235, 662 A.2d 1179 (1995). Section 221.1.a (1) attempts to prohibit that which the General Statutes authorize, to wit, Sunday racing after twelve noon and racing and other contests or demonstrations of speed

¹⁴ In 2004, the legislature revised the statute to its current wording, which no longer includes permitting responsibilities for the commissioner of motor vehicles. See Public Acts 2004, No. 04-199, pp. 714-15. However, in all other relevant respects, the revisions of 1998 remained intact.

or skill with a motor vehicle as a public exhibition on any day of the week. The zoning regulation and the statute cannot coexist without conflict and, therefore, those portions of section 221.1.a both violate, and are preempted by, General Statutes § 14-164a (a). Along with the prohibition of Sunday racing after noon in any form (see section 221.1.a. (1)), the portions of section 221.1.a that irreconcilably conflict with the statute are those provisions of section 221.1.a (3) that restrict racing on all other days of the week.

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Accordingly, the court sustains the Park's appeal as to that portion of section 221.1.a of the amendments to the zoning regulations which provides that "[a]ll activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays" to the extent that this section prohibits that which the legislature permits, namely, car racing after noon on Sundays, and as to the other portions of 221.1.a, namely those that restrict mufflered and unmufflered racing, that, when read together, limit car racing on Saturdays to ten Saturdays per year.

В

Regulation of Unmufflered Racing

The 2015 amended regulations limit, more strictly, unmufflered as compared to mufflered racing. Unmufflered racing is permitted only on Tuesdays, and on ten Saturdays and Fridays a year. In contrast, mufflered racing is allowed on any weekday between 9:00 a.m. and 10:00 p.m. ¹⁵ The Park contends that these limitations on unmufflered racing are an illegal and unauthorized attempt to regulate noise because the Comm'n did not comply with the prerequisites set forth in *Berlin Batting Cages* v. *Planning & Zoning Commission*, 76 Conn. App.

¹⁵ The restrictions on unmufflered racing are found in Section 221.1,a of the amendments.

199, 821 A.2d 269 (2003) before passing those specific amendments. The Comm'n and the Council disagree, contending that (1) the separate prohibitions and limitations on unmufflered racing are regulations of use and not noise; (2) even assuming it is a noise regulation, it is authorized; and (3) *Berlin Batting Cages* does not govern the outcome. Accordingly, this court must decide (1) whether the restrictions on unmufflered racing constitute regulation of noise; if so, then (2) whether the Comm'n has the authority to regulate noise; and, if so, then (3) whether the Comm'n was required to comply with *Berlin Batting Cages*.

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The court turns first to the language of the regulations. As the regulations do not contain a definition of "muffler," "mufflered racing" or "unmufflered racing," the court refers to dictionary definitions to determine the commonly approved usage of the language in question. See Schwartz v. Planning & Zoning Commission, 208 Conn. 146, 153, 543 A.2d 1339 (1988) ("words employed in zoning ordinances are to be interpreted in accord with their natural and usual meaning"); 9A R. Fuller, supra, § 34.6 (land use regulations passed by an agency rather than by the legislative body of a municipality are equivalent to an ordinance). A muffler is "a device to deaden noise; especially: one forming part of the exhaust system of an automotive vehicle." Merriam-Webster's Collegiate Dictionary (10th Ed. 1997).

Accordingly, by definition, mufflers exist to deaden noise. The rational and only distinction between mufflered and unmufflered racing is the amount of noise generated. See Spero v. Zoning Board of Appeals, 217 Conn. 435, 441, 586 A.2d 590 (1991) ("[c]ommon sense must be used in construing the regulation, and we assume that a rational and reasonable result was intended by the local legislative body").

The position taken by the Comm'n and the Council, that regulation of unmufflered engines is not a regulation of noise, casts a blind eye on the overwhelming amount of record

evidence demonstrating that those who supported the 2015 amendments associated unmufflered racing with intolerable noise. The position taken by the Comm'n and the Council also ignores the lengthy history of the regulation of unmufflered racing at the Site. Given this lengthy history, it cannot be argued that the 2015 amendments were written on a blank slate. Rather, for almost sixty years, beginning with the 1959 injunction, unmufflered racing has been associated with the creation of intolerable noise. Indeed, in issuing the 1959 injunction, the court clearly distinguished mufflered from unmufflered racing, and strictly limited the operation of such unmufflered engines at the Site after finding that noise from unmufflered engines especially created a nuisance.

In an attempt to counter the almost tautological quality of these facts and conclusions, the Comm'n advanced what, at first blush, appears to be a logical sounding argument as to why the regulation of unmufflered racing is not the regulation of noise. According to the Comm'n, unmufflered racing is more strictly regulated because it is more popular than mufflered racing, and, therefore, attracts more fans who, in turn, create more traffic and more air and light pollution. The one insuperable problem with this argument is that, in the 1,870 page administrative record, there is not one jot of factual evidence to support the conclusion that unmufflered racing attracts more fans. Without any factual support in the administrative record, this argument must fail. ¹⁶ For the foregoing reasons, the court finds that the regulation of unmufflered racing is the regulation of noise.

The court also finds that the Comm'n has the general authority to regulate noise. See Cambodian Buddhist Society v. Planning & Zoning Commission, 285 Conn. 381, 440, 941 A.2d

¹⁶ Notably, in making this argument, the Comm'n does not point to any facts in the record, but only to its interpretation of a legal argument made by the Park's counsel in its motion to modify the injunction in the *Adams* case.

868 (2008) (zoning commission could reasonably have concluded that 148-car parking lot would be a significant source of noise); *Husti* v. *Zuckerman Property Enterprises*, *Ltd.*, 199 Conn. 575, 582, 508 A.2d 735, appeal dismissed, 479 U.S. 802, 107 S. Ct. 43, 93 L. Ed. 2d 6 (1986) (citing § 8-2 and noting that noise is one of dangers that zoning is meant to combat); *Hayes Family Limited Partnership* v. *Plan & Zoning Commission*, 115 Conn. App. 655, 662, 974 A.2d 61, cert. denied, 293 Conn. 919, 979 A.2d 489 (2009) (noise was a relevant consideration when evaluating special permit application to construct a pharmacy).

The court must now decide whether the Comm'n's general authority to regulate noise is limited by the holding of *Berlin Batting Cages*. There, the court held, inter alia, that a zoning regulation purporting to control noise was invalid because it conflicted with state statutes governing noise pollution control. *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, supra, 76 Conn. App. 215-219. General Statutes § 22a-67 et seq. governs noise pollution control, and mandates that any municipal noise pollution control enactment must be approved by the commissioner of environmental protection. The regulation at issue in *Berlin Batting Cages*, § X (D) (3), was located within a chapter of regulations entitled "Environmental and Related Regulations," and provided that "[a]ny noise emitted outside the property from which it originates shall comply" with certain noise pollution control provisions of the State's Department of Environmental Protection. Id., 215. By its terms, that regulation "purported to adopt the noise control regulations promulgated by the commissioner," and, thus, the court held that § X (D) (3) was a noise control ordinance as contemplated by General Statutes § 22a-67 et seq. Id., 217-18. However, § X (D) (3) had not been approved by the commissioner. Id., 217.

The Appellate Court rejected the town's argument that such approval was unnecessary because General Statutes § 8-2 authorized it to regulate noise. Id., 218. The court explained that

the authority granted to zoning commissions under § 8-2, to promote health and the general welfare, does not "necessarily confer" the authority to promulgate regulations concerning noise pollution and, even if it did, § 8-2 certainly could not trump the legislature's specific enactment in § 22a-67 et seq. Id. Indeed, the court noted that § 8-2 does not even "mention noise or noise pollution." Id. The court also rejected the town's argument that the regulation did not purport to comprehensively regulate noise emissions because its requirements only applied to site plan reviews. Id., 217-18.

It is difficult to reconcile *Berlin Batting Cages* with the line of cases cited above that stand for the proposition that §8-2 gives a zoning body the authority to regulate noise. Read broadly and very liberally, *Berlin Batting Cages* could require a zoning commission to seek the approval of the state environmental commissioner before promulgating any zoning regulation even remotely related to noise. The broad dicta of *Berlin Batting Cages*, namely that §8-2 does not even mention "noise or noise pollution," id., 218 seems to conflict with prior and subsequent appellate authority, including *Cambodian Buddhist Society* v. *Planning & Zoning Commission*, supra, 285 Conn. 381, *Husti* v. *Zuckerman Property Enterprises*, *Ltd.*, supra, 199 Conn. 575, and *Hayes Family Limited Partnership* v. *Plan & Zoning Commission*, supra, 115 Conn. App. 655, all of which stand, either expressly or by necessary implication, for the proposition that zoning commissions may regulate noise under the authority of § 8-2. *Husti*, in particular, is at odds with *Berlin Batting Cages*. In *Husti*, the Supreme Court turned back state and federal constitutional challenges to zoning regulations that limited outdoor concerts in a residential neighborhood. In so holding, the Supreme Court cited "noise" as falling within the "kinds of dangers that zoning is meant to combat; see General Statutes §8-2." *Husti*, supra, 581-82.

In attempting to reconcile the foregoing appellate authority with the holding of Berlin Batting Cages, this court is mindful of the bedrock principle that "[a]s a procedural matter, it is well established that [our Appellate Court], as an intermediate appellate tribunal, is not at liberty to discard, modify, reconsider, reevaluate or overrule the precedent of our Supreme Court. . . . Furthermore, it is axiomatic that one panel of [the Appellate Court] cannot overrule the precedent established by a previous panel's holding." (Citation omitted; internal quotation marks omitted.) St. Joseph's High School, Inc. v. Planning & Zoning Commission, 176 Conn. App. 570, 595, 170 A.3d.73 (2017). Any assumption by this court that Berlin Batting Cages intended to overrule Supreme Court precedent recognizing that § 8-2 authorizes zoning bodies to generally regulate noise would contravene those fundamental principles of judicial restraint. Similarly, this court will also not assume that the Appellate and Supreme Court cases issued after Berlin Batting Cages were meant to overrule it sub silentio. Rather, in light of appellate authority standing for the proposition that § 8-2 authorizes a zoning commission to regulate noise, this court concludes that the holding of Berlin Batting Cages should be interpreted narrowly and should be limited to its facts. Specifically, there were two overriding factors that resulted in the finding that § X (D) (3) was a noise pollution control ordinance subject to approval pursuant to General Statutes § 22a-67 et seq. First, § X (D) (3) was located within the regulatory chapter regarding "Environmental and Related Regulations," and second, by its terms, it "purported to adopt the noise control regulations promulgated by the commissioner." Berlin Batting Cages, Inc. v. Planning & Zoning Commission, supra, 76 Conn. App. 215-219. The town virtually insured that the noise control regulations would be ineffective without the prior approval of the commissioner of environmental protection by placing these regulations so clearly within the bounds of the comprehensive statutory scheme regulating noise pollution.

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Here, the court finds that the 2015 amendments limiting unmufflered racing do not constitute regulation of noise pollution in a manner similar to the regulation of noise pollution found in *Berlin Batting Cages*. Rather, the amendments at issue in this case, which restrict noise from car engines arising from entertainment event, a race, are much more similar to the limitations at issue in *Husti*, which restricted noise from entertainment events, namely, outdoor concerts in a residential neighborhood under §8-2. As the Comm'n properly invoked its general authority to regulate noise, an authority conferred by § 8-2, the court concludes that the unmufflered racing regulations are not ineffective for want of the pre-approval of the commissioner of environmental protection. The Park's appeal as to the regulation of unmufflered racing is denied, and the regulations concerning the same are upheld.

С

Special Permit to Seek Zoning Amendments

The Park argues that the Comm'n exceeded its statutory authority under § 8-3 (c) by requiring that the Park apply for and obtain a special permit as a precondition to attempt to amend the new zoning regulations. As previously noted, section 221.1.a regulates racing, including days and hours of racing operation and restrictions on unmufflered racing. Subsection (8) provides that "[t]he parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection." Virtually identical

is subsection (d) of 221.3, which pertains to camping by spectators and participants: "The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection."

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In contrast to these regulations, General Statutes § 8-3 (c) only requires an applicant requesting a change in zoning regulations to file a written petition requesting such, in a form prescribed by a zoning commission; it does not authorize a zoning commission to require a petitioner seeking an amendment to apply for and receive a special permit before seeking the change. Counsel for the Comm'n candidly admitted that there is no other provision in the Salisbury zoning regulations requiring a person or entity who seeks a zoning amendment to apply for and receive a special permit. Nevertheless, in an attempt to counter the Park's argument, the Comm'n steadfastly claims that §§ 221.1.a (8) and 221.3.d are merely precatory. The court disagrees.

The foregoing amendments indicate that the Comm'n may amend the regulations in question, namely Sections 221.1 and 221.3. That part does not create a legal obligation and, is indeed, precatory. See Citizens Against Overhead Power Line Construction v. Connecticut Siting Council, 139 Conn. App. 565, 579, 57 A.3d 765 (2012), aff'd, 311 Conn. 259, 86 A.3d 463 (2014) ("the word 'may' denotes permissive behavior"). However, there is nothing "permissive" about what the Park must do to secure an amendment. To attempt to change either the "parameters" of section 221.1 or the "standards" of section 221.3, the Park must file, and have

approved by the Comm'n, (1) a special permit application that is in compliance with all requirements of these regulations (including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the property); (2) the proposed amendments; and (3) a petition to amend the zoning regulations setting forth alternative parameters or standards. Nothing in the existing language of section 221.1.a (8) or section 221.3.d indicates that these requirements are anything but directory. In other words, if the Park wished to seek an amendment allowing activity with mufflered cars on the track until 10:05 p.m. instead of 10:00 p.m. then the Park would be required to file a full site plan as set forth above. The foregoing requirements are clearly outside of the statutory authority laid out in § 8-3 (c) and, therefore, the court sustains the appeal insofar as it pertains to amendment procedures set forth in sections 221.1.a (8) and 221.3.d.

The court also notes that this amendment process is unreasonable given that the Park is a preexisting, nonconforming use. There is no doubt that a municipality may regulate a preexisting nonconforming use under its police powers. See *Taylor* v. *Zoning Board of Appeals*, 65 Conn. App. 687, 697-98, 783 A.2d 526 (2001) (requiring a landowner to obtain a permit for a quarry was a reasonable regulation of a preexisting nonconforming use under the town's police powers). "Regulation of a nonconforming use does not, in itself, abrogate the property owner's right to his nonconforming use. . . . A town is not prevented from regulating the operation of a nonconforming use under its police powers. Uses which have been established as nonconforming uses are not exempt from all regulation merely by virtue of that status. It is only when an ordinance or regulatory act abrogates such a right in an unreasonable manner, or in a manner not related to the public interest, that it is invalid." (Internal quotation marks omitted.) Id., 698. In the present case, it is the "parameters" of 221.1.a, pertaining to hours, days, and noise quality of

racing, and the "standards" of 221.3, concerning parking and camping, that would be subject to the foregoing amendment process. There is, however, no rational correlation between these use, noise or hours of racing issues and the requirement that a site plan be filed in order to secure even the smallest of amendments thereto. As such, this court finds that the onerous requirements of sections 221.1.a (8) and 221.3.d — requiring that the Park file a comprehensive site plan solely to apply for, and receive, a special permit in order to then petition the Comm'n for a zoning change — are unreasonable and not related to the public interest.

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CONCLUSION

The court sustains the Park's appeal as to (1) the provisions prohibiting Sunday racing after noon and otherwise limiting car racing on Saturdays to ten Saturdays per year, in contravention of General Statutes § 14-164a (a), and (2) the provisions, found in sections 221.1.a(8) and 221.3.d that require the Park to file a comprehensive site plan so as to apply for and obtain a special permit prior to seeking a change in these regulations. The court finds in favor of the Comm'n in regard to other aspects of the zoning amendments.

The court must remind all of the parties, however, that both the *Adams* injunction and the stipulated ZBA Judgment remain in full force and effect. This decision has no impact on the pending motion to motion to modify the *Adams* injunction, which awaits a hearing date and a decision. The legal standards for modifying an existing injunction in a private nuisance action are different from those used when a court reviews zoning amendments. Compare *Adams* v. *Vaill*, supra, 158 Conn. 485 ("courts have inherent power to change or modify their own injunctions where circumstances or pertinent law have so changed as to make it equitable to so

do") with Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 220 Conn. 543-44 ("[c]ourts will not interfere with...local legislative decisions unless the action is clearly contrary to law or in abuse of discretion").

SO ORDERED.

BY THE COURT,

The Hon. John D. Moore

DOCKET NO. LLI-CV-15-6013033-S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

OF LITCHFIELD

PLANNING & ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL. : FEBRUARY 19, 2018

MOTION TO REARGUE PURSUANT TO PRACTICE BOOK SECTION 11-11

Pursuant to Practice Book Section 11-11, the Defendant, Planning & Zoning Commission of the Town of Salisbury ("the Commission"), respectfully requests that the Court grant reargument of the decision issued by the Court, The Hon. John D. Moore, J., in the Memorandum of the Decision ("Decision") dated January 31, 2018 (Entry No. 165.00). The reasons for the request are that the Court has failed to address claims of law presented by Commission in its brief and in oral argument to the Court on May 10, 2017 and August 30, 2017. If the Court had considered these arguments, the Commission believes the Court would have ruled differently from that set forth in its Decision. The Memorandum also contains misapprehension of facts and legal inconsistencies.

THIS MOTION IS A SECTION 11-11 MOTION

The Commission respectfully requests the Court to grant the motion, revise its Decision, and dismiss his appeal for the reasons and in the manner set forth more specifically in the Memorandum of Law filed simultaneously herewith and incorporated by reference herein.

THE DEFENDANT,
PLANNING & ZONING COMMISSION
OF THE TOWN OF SALISBURY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reargue was mailed or delivered electronically on this 19th day of February 2018 to the following counsel and pro se parties of record and that written consent for electronic delivery was received from all attorneys and pro se parties receiving electronic delivery:

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NO. LLI CV 15 6013033S : SUPERIOR COURT

LIME ROCK PARK, LLC : JUDICIAL DISTRICT

: OF LITCHFIELD

PLANNING AND ZONING COMMISSION

v.

OF THE TOWN OF SALISBURY, ET AL. : FEBRUARY 20, 2018

PRACTICE BOOK §§ 11-11 AND 11-12 MOTION TO REARGUE MEMORANDUM OF DECISION DATED JANUARY 31, 2018 (THE HON. JOHN D. MOORE, J.)

Intervening defendant Lime Rock Citizens Council, LLC ("LRCC") hereby moves, pursuant to Practice Book § 11-11, for reargument of this Court's Memorandum of Decision dated January 31, 2018 (the Hon. John D. Moore, J.).

LRCC and its undersigned counsel understand that the purpose of a motion to reargue is not to rehash previously-made arguments, but to identify aspects of applicable law that have been overlooked or misapplied, or inconsistencies in the decision. *See, e.g., Chartouni v. DeJesus*, 107 Conn. App. 127, 129, *cert. den.*, 288 Conn. 902 (2008). This motion complies with this standard. Moreover, each of the grounds set forth below, if not raised by a motion to reargue and addressed by the Court, would need be raised by a Practice Book § 66-5 motion for articulation, if an appeal to the Appellate Court were to be certified.

LRCC joins in the Motion to Reargue filed by the co-defendant Planning and Zoning Commission, and states additional grounds below.

- I. SPECIFIC GROUNDS OF REARGUMENT.
 - A. The Track's Waiver Of Objections To The Limits On Days And Hours Of Racing, And To The Special Permit Requirement.

The decision at 23-24 misstates the facts regarding, and legal effect of, Lime Rock Park's predecessor stipulating, in 1966 and again in 1968 and 1988, to the ban on Sunday racing and

PRACTICE BOOK §§ 11-11 and 11-12 MOTION TO REARGUE

limitations on Saturday racing and racing hours. Also, at 43-46, the decision does not address LRCC's waiver argument regarding the special permit requirement.

At 23-24, the decision rejects LRCC's waiver argument on four grounds: (1) the 2013 zoning regulations limited "hours" but not "days" of racing (thus implying that as of 2013, the Commission did not ban Sunday racing, but did so in 2015); (2) the current plaintiff, Lime Rock Park, LLC, might not be bound by the action of its predecessors in stipulating to a judgment limiting days and hours of racing; (3) "[the] issue of Sunday racing was decided by Judge Shea rather than stipulated to by the Park's predecessor in interest"; and (4) the "stipulated amendments to the injunction order that came later did not relate to the fundamental issue Sunday racing." Each of these grounds is erroneous.

First, as to whether the actions of Lime Rock Park's predecessors bind the current plaintiff, it is black-letter law (as set forth in LRCC's October 19, 2016 Brief at 20) that injunctions relating to the use of land in general, and injunctions issued in nuisance cases in particular, are *in rem* and run with the land. Were this not so, the plaintiffs in the 1959 lawsuit would have needed to file a new action and obtain a new injunction each time the owner of the Track sold the property, which as the record shows has occurred several times since 1959. "[Nuisance] cases . . . treat injunctions . . . as in rem orders that bind nonparties with possessory rights to the property." *Commission of Env'l Protection v. Farricielli*, 307 Conn. 787, 805-15 (2013).

Second, while a judgment is a court order, a stipulation to judgment is a contract. In Bonner v. City of New Haven, 2017 WL 6029567 at *3 (Super. Ct. Nov. 13, 2017) (copy attached), citing Solomon v. Keiser, 22 Conn. App. 424, 426-27 (1990), the Court summarized the law:

[The] Appellate Court [has] stated that . . . a stipulated judgment bears important distinctions from a judgment rendered following a trial of controverted facts. Instead of constituting a judicial determination of a litigated right, a stipulated judgment may be defined as a contract of the parties acknowledged in . . . court and ordered to be recorded by a court of competent jurisdiction

See also Gillis v. Gillis, 214 Conn. 336, 339 (1990).

The 1966, 1968, and 1988 stipulations in *Adams v. Vaill* (Appendix to LRCC's Brief at A29-A40) are clearly "stipulations," not judgments after trial; they clearly constitute the *acceptance* by Lime Rock Park's predecessors of the ban on Sunday racing and the limits on racing hours. In other words, in 1966, Lime Rock Park converted the 1959 judgment to a contract. This agreement was restated in the 1968 stipulation, and again in 1988. Thus, this Court's decision (at 23-24) is incorrect in finding that "the stipulated amendments to the injunction order that came later did not relate to the fundamental issue of Sunday racing." In fact, the stipulations are clear on their face that in 1966, 1968, and 1988, the owner of the Track agreed contractually to the ban on Sunday racing and limited hours on other days. The conversion of the 1959 judgment against it to a stipulation was a textbook waiver by Lime Rock Park's predecessor, a relinquishment of the right to challenge the 1959 injunction terms and raise defenses and objections to the 1959 orders. The 1966, 1968, and 1988 stipulations were not orders of Judge Shea, but later acquiescence by the Track to Judge Shea's 1959 orders.

Moreover, the 2013 amendments, by regulating "hours," regulated Sunday racing; they plainly intended to allow zero hours on Sunday. To hold that the 2013 regulations, which followed agreement to a ban on Sunday racing and limits on hours that spanned 47 years, suddenly and inadvertently abandoned the prior limits is contrary to the Commission's clear intent and an inappropriate standard for reviewing regulations drafted by a volunteer municipal land use agency.

In addition, the decision at 12 acknowledges that the Commission made the Track subject to special permit regulation in 1975. LRCC, in its Brief at 19, argued that the Track had waived objection to special permit regulation by not appealing this regulation in 1975. The General Statutes for decades have provided an appeal process for challenging regulation amendments. The Track in 1975 accepted a special permit regime by not appealing. (Failing to appeal may also be regarded as *res judicata* as to the legality of an amendment.) The 2015 amendments,

therefore, were nothing new as to special permit regulation of the Track. The decision at 43-45 does not address waiver as it relates to the special permit.¹

B. The Flawed § 14-164a Preemption Analysis.

With regard to whether General Statutes § 14-164a preempts the Salisbury Zoning Commission from banning racing on Sunday and Saturday hours limits, the decision contains a fundamental contradiction. On the one hand, at 18-22, the decision confirms the Salisbury Zoning Commission's authority under General Statutes § 8-2 to adopt the 2015 regulation amendments, thus acknowledging the Commission's authority to regulate auto racing as a land use. Such authority necessarily includes the power under § 8-2 to regulate when and where racing may occur. (The Commission, in its appeal brief and Motion to Reargue, has amply cited case law regarding the authority of zoning commissions to regulate hours of operation.) However, the decision then finds a conflict between the Commission's 2015 regulation banning Sunday racing and limiting Saturday racing interpreting General Statutes § 14-164a as prohibiting municipal limits on Sunday racing. In doing so, the decision finds a conflict even though it recognizes that the legislature, in § 8-2, has granted authority to zoning commissions to regulate racing and to ban racing at certain times. Put another way, the decision fails to recognize the Commission's broader, concurrent § 8-2 authority to be more restrictive than § 14-164a with regard to racing, and thus fails to harmonize § 14-164a with § 8-2, a necessary step in preemption analysis. This error is compounded by the decision's failure to acknowledge or discuss § 8-13, in which the legislature has granted express authority to zoning commissions to regulate a land use more strictly than what is contained elsewhere in state statutes.

In the decision at 8, n.6, the Court observes that it does not know "whether the 1966 stipulation, arose from motion practice or was simply an agreement among the parties" However, since the 1966 document was stipulation, whether it was the result of a contested motion or an agreement *ab initio* is irrelevant. The outcome was a stipulation, a voluntary agreement. It should also be noted that the 1978-79 "ZBA case" stipulations are not relevant to whether the Track's predecessors waived their challenge to racing limits; it is the *Adams v. Vaill* stipulations that demonstrate the waivers.

The decision is also inconsistent and erroneous with regard to other aspects of preemption analysis. At 24, the decision quotes *Bencivenga v. Milford*, 183 Conn. 168, 176 (1981) as directing that preemption analysis based on conflict "can only be determined by reviewing the policy and purposes behind the statute" However, the Court's statutory interpretation focuses almost entirely on grammar and punctuation, without considering policy or purpose. The critical question in this regard is whether, by the 1998 change in punctuation in § 14-164a, the legislature intended a 180 degree reversal in state policy from the 1939 statute (which clearly granted local control) regarding municipal authority to regulate racing. The decision does not consider that the re-punctuation of the sentence in 1998 was not identified by any legislator, public official, or hearing witness as a solution to a problem or a change in state policy toward local control of auto racing. The decision simply does not consider whether the legislature in 1998 intended a substantial policy change. The fact that there is no legislative history to support such a radical change is crucial evidence that the legislature *did not* intend a policy change. The decision does not discuss this necessary aspect of preemption analysis.²

C. <u>Misstated Non-Conforming Use Rights.</u>

The decision misstates the Track's status and potential rights as a non-conforming use, holding that the *current* Track is exempt from being regulated by special permit due to its being a non-conforming use. First, the Track has been a permitted use since 1959, so it cannot be non-

In a second, albeit backhand way, the text of § 14-164a acknowledges that regulation of racing is a concurrent between state government and local zoning commissions. The statute first states that "[The] legislative body of the city, borough or town . . . may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday" "Legislative body" means the town's governing body, not its zoning commission; in fact, under § 8-1, the legislative body *creates* the zoning commission by ordinance. However, § 14-164a then goes on to say that the racing before noon on Sunday that the legislative body may authorize cannot take place "contrary to the provisions of any city, borough or town ordinances." In its decision at 38, the Court properly recognizes (citing Judge Fuller's treatise) that "land use regulations passed by an agency other than by the legislative body of a municipality are equivalent to an ordinance." If so, then § 14-164a as quoted above recognizes the authority of the town's legislative body to authorize Sunday racing before noon, but the concurrent authority of the zoning commission to prohibit such a grant.

conforming. Second, even if the Track is a non-conforming use, the protected non-conformity is, at most, the type, scope, and size of facility that existed in 1959, but not expansion occurring after 1959. Non-conforming uses are not permitted to expand, without a site plan or special permit being approved. See, generally, R. Fuller, Connecticut Land Use Law and Practice, §§ 52.1 and 52.2 (4th ed. and 2016-17 Supp.).³ None of the Track's post-1959 expansions has ever been approved by the Salisbury Planning and Zoning Commission – no doubt because the 1959 injunction terms and the later stipulations were deemed sufficient control of the racing activities. In other words, the Track's expansions since 1959 are not non-conforming; they are unpermitted. The current use is simply not protected from special permit regulation as a non-conformity.

Put another way, a special permit use is a permitted use on which a commission may impose conditions to mitigate impacts, and a non-conforming use is a protected use on which a commission may impose conditions to mitigate impacts. In this case, the entire purpose of the 2015 amendments requiring (as began in 1975) a special permit is to govern the expansion that the Track began to pursue in 2015, and to make clear that the power to impose conditions rests with the Commission under the statutory zoning process, not by litigated changes to the orders or stipulations in *Adams v. Vaill*.

D. Failure To Address Severability.

Despite the defendant Commission's repeal of § 221.6 (see MOD at 13, n.8), by invalidating the ban on Sunday racing and the limits on Saturday racing, as well as the special permit provision, the Court was obligated to engage in a severability analysis, as to whether invalidation of these critical sections invalidated the entirety of the 2015 amendments. The inquiry is whether the invalidated portions are "integral" to the regulatory regime intended by the Commission. See, e.g., Vaszauskas v. Zoning Board of Appeals, 215 Conn. 58, 66 (1990). Judge

Moreover, a property owner bears the burden of proving the scope of its claimed non-conforming use. See, e.g., Pleasant View Farms Development, Inc. v. Zoning Board of Appeals, 218 Conn. 265, 272 (1991). The Track has never done so, and the Court may not presume non-conforming status.

Fuller's treatise at § 35.2, p. 368, explains that a severability clause in a commission's regulations (which generally states that invalidation of a regulation should be regarded as severable from other parts) is a rebuttable presumption, *citing Langer v. Planning and Zoning Commission*, 163 Conn. 453, 459 (1972); and that the issue of severability is a question of legislative intent, "which is a judicial question for the court," *citing Burton v. City of Hartford*, 144 Conn. 80, 89-90 (1956). This Court should conclude that the racing ban and limits and the special permit requirement were integral; what is left after the invalidation is plainly not what the Commission intended as its regulatory program.

II. CONCLUSION.

For these reasons, co-defendant Lime Rock Citizens Council, LLC moves for reargument.

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Motion to Reargue and Attachment were electronically delivered this 20th day of February, 2018, to all counsel of record and written consent for electronic delivery has been received from all counsel.

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Commissioner of the Superior Court

DOCKET NO. LLI-CV-15-6013033 S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT LITCHFIELD

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

FEBRUARY 20, 2018

PLAINTIFF LIME ROCK PARK LLC'S MOTION TO REARGUE

Pursuant to § 11-11 of the Practice Book, plaintiff Lime Rock Park, LLC ("Lime Rock") respectfully moves to reargue the portion of the Court's Memorandum of Decision (Moore, J.) dated January 31, 2018 relating to noise regulation because certain controlling principles of law have been overlooked. "[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts." *See Jaser v. Jaser*, 37 Conn. App. 194, 202 (1995). Reargument may be used "to address alleged inconsistencies in the trial court's memorandum of decision as well as claims of law that the [movant] claim[s] were not addressed by the court." *See K.A. Thompson Electric Co. v. Wesco, Inc.*, 24 Conn. App. 758, 760 (1991).

As the Court noted in its Memorandum of Decision, Lime Rock challenged those portions of the Salisbury Planning and Zoning Commission's 2015 amended regulations that restrict unmufflered racing as opposed to mufflered racing. (Mem. Of Dec., Dkt. 165.00, p. 37). After considering the relevant definitions of "muffler," properly employing "common sense," and scouring the administrative record and the history of the regulations, the Court correctly found that "the regulation of unmufflered racing is the regulation of noise." *Id.* at p. 38-39. It rejected the Commission's argument that the regulation was one related to traffic congestion. *Id.*

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However, despite this finding, the Court upheld the regulation as valid. It is this legal conclusion that Lime Rock seeks to reargue in view of the following controlling principles of law.

In adjudicating the validity of the noise regulation, the Court's opinion remained focused on judicial precedent, with particular emphasis on *Berlin Batting Cages, Inc. v. Planning & Zoning Comm'n of Town of Berlin*, 76 Conn. App. 199 (2003) and *Husti v. Zuckerman Prop. Enterprises, Ltd.*, 199 Conn. 575 (1986). (Mem. Of Dec., Dkt. 165.00, p. 39-43). However, the text of the statutes at issue may have been overlooked in the court's analysis of judicial opinions. Conn. Gen. Stat. § 22a-73(c) provides in clear terms that "any municipality may adopt more stringent noise standards than those adopted by the commissioner, *provided such standards are approved by the commissioner [of the Department of Energy and Environmental Protection ("DEEP")*]." (emphasis added). If, as the Court held, the Commission's unmufflered racing regulations are noise regulations, ² then the plain language of the statute requires that they be approved by the commissioner of the DEEP. Since it is undisputed that they were not approved, the regulations are invalid. No further analysis is needed to reach this result.

When planning and zoning commissions adopt a noise regulation under Conn. Gen. Stat. § 8-2, they must do so consistently with Conn. Gen. Stat. § 22a-73(c) by obtaining DEEP commissioner approval. It is "one of our most fundamental tenets of statutory construction ... that we must, if possible, construe two statutes in a manner that gives effect to both, eschewing an interpretation that would render either ineffective." Nizzardo v. State Traffic Com'n, 259 Conn. 131, 156 (2002). This Court agreed that the Commission's regulation on unmufflered

Additionally, Conn. Gen. Stat. § 22a-73(c) provides that "[n]o [noise control] ordinance shall be effective until such ordinance has been approved by the commissioner." The Appellate Court has clearly held that zoning regulations are treated the same as ordinances. *Berlin Batting*, 76 Conn. App. at 219.

² The Commissioner of the DEEP has not adopted noise standards regarding unmufflered racing.

racing was a noise regulation, but rendered Conn. Gen. Stat. § 22a-73(c) ineffective by holding that DEEP approval was not required under § 8-2. But there is no conflict between § 8-2 and § 22a-73(c). Rather, the two statutes can be harmonized by recognizing that planning and zoning commissions can adopt noise regulations under § 8-2 so long as DEEP approval is obtained under § 22a-73(c). Nizzardo, 259 Conn. at 157 ("courts have been said to be under a duty to construe statutes harmoniously where that can reasonably be done"). Lime Rock respectfully submits that reargument should be allowed because the plain and ordinary meaning of the language of Conn. Gen. Stat. § 22a-73(c) was overlooked.

Secondly, the Court relied on a series of three precedents to conclude that *Berlin Batting* "should be interpreted narrowly and should be limited to its facts." (Mem. Of Dec., Dkt. 165.00, p. 42). These precedents were: *Husti v. Zuckerman Prop. Enterprises*, *Ltd.*, 199 Conn. 575 (1986), *Cambodian Buddhist Soc. of Connecticut, Inc. v. Planning & Zoning Comm'n of Town of Newtown*, 285 Conn. 381 (2008), and *Hayes Family Ltd. P'ship v. Town Plan & Zoning Comm'n of Town of Glastonbury*, 115 Conn. App. 655 (2009). However, Lime Rock respectfully submits that certain aspects of these three precedents have been overlooked. Importantly, none of these three cases involved a noise regulation.

The regulation at issue in *Husti* was not a noise regulation. Rather, the regulation "prohibit[ed] all outdoor entertainment, regardless of its message, in the residential zone that contains the defendants' club." *Husti*, 199 Conn. at 581. Many factors and considerations support the validity of a regulation prohibiting outdoor entertainment, only one of which is noise. The Supreme Court in *Husti* mentioned three: "causing noise, attracting crowds, and creating traffic congestion." *Id.* at 582. This must be compared with the regulation at issue in this case, which prohibits unmufflered racing *as opposed to* mufflered racing. It is a foregone conclusion that

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outdoor entertainment is going to occur under the regulation at issue here. The only question is how noisy that entertainment is going to be. As this Court correctly concluded, the regulation at issue in this case is only concerned with noise, and not, for example with the creation of "more traffic." (Mem. Of Dec., Dkt. 165.00, p. 39). Simply put, the prohibition at issue in *Husti* – a prohibition on outdoor entertainment – is not a "noise standard" under Conn. Gen. Stat. § 22a-73(c). Therefore, DEEP approval of the restriction on outdoor entertainment was not required. The fact that noise may have been one of the considerations, among many, underlying the reasonableness of the *Husti* regulation is of no concern if the regulation itself is not a noise standard.

Similarly, the regulation at issue in Cambodian Buddhist Society was not a noise standard. Rather, the regulation (§ 8.04.710) "require[d] that 'the proposed use [of land] shall be in harmony with the general character of the neighborhood." Cambodian Buddhist Soc., 285 Conn. at 387. That is not a noise standard under Conn. Gen. Stat. § 22a-73(c), requiring DEEP approval. The fact that noise, among a host of other factors, could be considered in determining whether the proposed use of land was in "harmony with general character of the neighborhood" does not change the analysis. The regulation itself is not a noise standard. On the other hand, as this Court found, the regulation of unmufflered racing at issue in this case is itself a noise standard. Therefore, approval is necessary for the regulation to be valid.

Lastly, there was no regulation, much less a noise regulation, that was at issue in *Hayes*. Instead, that case dealt with whether the commission properly denied a special permit. *Hayes*, 115 Conn. App. at 656-57. Since there was no regulation at stake, there was obviously nothing for the DEEP to approve. There was no "noise standard" under Conn. Gen. Stat. § 22a-73(c). Furthermore, noise was only one of the considerations that supported the commission's denial of

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the special permit. The commission also considered "the size and topography of the property, its existing and proposed contours, existing trees and shrubs and proposed landscaping ... [and whether the proposed use] would adversely affect [others'] property values." *Hayes*, 115 Conn. App. at 660-62. Thus, nothing in *Hayes* is inconsistent with *Berlin Batting*.

In the final analysis, appellate precedent establishes that planning and zoning commissions can consider noise, among other factors, when adopting regulations that are *not noise standards*. For example, many factors, including noise, can be considered in adopting a regulation prohibiting outdoor entertainment (*Husti*) or in evaluating whether a proposed use of land would violate a regulation requiring harmony with the neighborhood (*Cambodian*). Conn. Gen. Stat. § 22a-73(c) has nothing to do with such regulations that are not express noise standards. Rather, Conn. Gen. Stat. § 22a-73(c) comes into play when a "noise standard" or "noise control ordinance" has been adopted. The statute is absolutely clear: if such a standard or ordinance is adopted, DEEP approval must be obtained. The Court has already found that the Salisbury P&Z Commission's regulation of unmufflered (as opposed to mufflered) racing is clearly a noise regulation. It is undisputed that DEEP approval was not sought or obtained. The regulation is therefore invalid. Lime Rock respectfully requests reargument and reconsideration of this issue for the foregoing reasons.

THE PLAINTIFF, LIME ROCK PARK, LLC

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CERTIFICATION

This is to certify that a copy of the foregoing has been sent, via e-mail and U.S. mail, postage prepaid, on the above date to:

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P.B. SECTION 11-11 MOTION

ORIGINAL MEMORANDUM OF DECISION

DOCKET NO: CV-15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT TORRINGTON

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

JANUARY 31, 2018

MEMORANDUM OF DECISION

AMENDED MEMORANDUM OF DECISION

DOCKET NO: CV-15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT TORRINGTON

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

July 17, 2018

AMENDED MEMORANDUM OF DECISION

(AMENDMENT TO MEMORANDUM OF DECISION DATED JANUARY 31, 2018. THIS AMENDED MEMORANDUM OF DECISION ADDRESSES ISSUES RAISED IN MOTIONS TO RECONSIDER THE JANUARY 31, 2018 MEMORANDUM OF DECISION. THIS AMENDED MEMORANDUM OF DECISION SUPERSEDES THE ORIGINAL MEMORANDUM OF DECISION)

DOCKET NO: CV-15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

J.D. OF LITCHFIELD

VS.

AT TORRINGTON

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

July 17, 2018

TATE OF CONNECTICU

AMENDED MEMORANDUM OF DECISION

I

INTRODUCTION

On December 18, 2015, Lime Rock Park, LLC (Park) filed this action to appeal the November 16, 2015 decision of the defendant, Planning and Zoning Commission of the Town of Salisbury (Comm'n), to amend certain of its zoning regulations. The zoning regulations amended in 2015 pertain to the operation of an automobile race track at a site owned by the Park (Site). On May 16, 2016, the court, Moore, J., granted the motion of the Lime Rock Citizens Council, LLC (Council) to intervene. The court conducted a hearing on May 10, 2017, with an additional argument taking place on August 30, 2017. At that August argument, the parties agreed to allow the court to file its decision in this matter on or before October 16, 2017. On September 11, 2017, two parties submitted supplemental briefing based on issues that arose during the August argument. Thereafter, on September 25, 2017, the court indicated, by way of order, that additional argument was necessary and, on September 26, 2017, ordered the parties to supplement the record. The parties filed the requested supplementation on October 6, 2017, and the additional hearing was held on October 10, 2017. During that hearing, the court allowed

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both parties to further supplement the record by admitting documents into evidence, including a more complete version of the Comm'n's 1959 zoning regulations. On January 31, 2018, the court issued its memorandum of decision (#165), denying the appeal in part and sustaining it in part. Judgment entered on January 31, 2018.

On February 20, 2018, the Comm'n (#167), the Council (#169) and the Park (#170) each filed motions to reargue and/or reconsider the decision, along with supporting memoranda of law. On February 27, 2018, the court ordered reargument on the issues raised in each of these three motions (#171). Thereafter, the parties filed a panoply of related objections and memoranda, including the following: the Park's objection to the Comm'n's motion to reargue (#172); the Park's objection to the Council's motion to reargue (#173); the Comm'n's memorandum in opposition to the Park's motion to reargue (#174); the Council's objection to the Park's motion to reargue and joinder to #174 (#175); the Park's reply memorandum to the Comm'n's objection to the Park's motion to reargue (#178) and the Comm'n's reply to the Park's objection to the Comm'n's motion to reargue (#179). The Comm'n also filed a motion for permission to supplement the administrative record (#180), with exhibits set forth in #177. On March 19, 2018, the court heard argument on all of the motions to reargue and responses thereto, as well as on the Comm'n's motion to supplement the record. The court denied the Comm'n's motion to supplement the record on March 19, 2018, and, on March 20, 2018, entered a further order (#180.10), providing additional reasons for this denial.

On April 10, 2018, and April 24, 2018, the court sought additional information from the Comm'n as to when a critical amendment to the zoning regulations occurred (##181 and 183). The Comm'n provided compliance to the court's requests on April 18, 2018 and May 3, 2018, respectively.

The January 31, 2018 judgment is hereby opened and this amended memorandum of decision supersedes the January 31, 2018 memorandum of decision. This amended memorandum of decision reflects the court's response to the issues raised in the motions to reargue. Where the court believed it helpful, it discussed the arguments raised in the motions to reargue in this amended memorandum of decision. For the reasons set forth below, the court sustains the appeal in part and denies it in part.

Π

REGULATORY HISTORY

Because regulation of the Site has arisen, as the Comm'n's chair stated, "as an accident of history or evolution," this court finds it both useful and necessary to review the regulatory history related to use of the Site as a motor vehicle race track. The court gleaned the following history from the administrative record and through judicial notice of pleadings in the following related cases: (1) Adams v. Vaill, Superior Court, judicial district of Litchfield, Docket No. CV-58-0015459-S, and the related appellate decision at 158 Conn. 478, 262 A.2d 169 (1969), including the appellate court file; (2) Lime Rock Foundation, Inc. v. Zoning Board of Appeals, Superior Court, judicial district of Litchfield, Docket No. CV-77-0016404-S; (3) Lime Rock Protection Committee v. Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-77-0016416-S; and (4) Lime Rock Protection Committee v. Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-78-0016920-S.

Before reviewing the regulatory history of the Site, however, it is vitally important to understand that, for six decades, regulation of the Site has been, at times, reactive in nature,

¹ Volume A-496, Connecticut Supreme Court Records and Briefs, Part 1, A-F, October Term, 1969, 1-62.

rather than planned or thoughtful. Additionally, regulation of the Site has been too often imprecise, and not careful. Regulation of the Site has taken three avenues: (1) a permanent injunction arising out of a nuisance lawsuit brought by neighbors of the Site against the owner, including modifications thereof; (2) a stipulated judgment, arising, in large part, from preexisting, nonconforming uses at the Site, which resolved three appeals of decisions made by the Salisbury Zoning Board of Appeals; and (3) the enactment and amendment of zoning regulations. At times, there has been inconsistency between these three avenues of regulation. Indeed, the mere existence of these three avenues of regulation has sown confusion regarding which authority regulated racing at the Site. The zoning amendments at issue comprise, to some degree, a consolidation of these three paths, and constitute an attempt by the Comm'n to organize the regulation of the Site into a more coherent and accessible fashion. The Comm'n intended to codify what it perceived to be the existing zoning "status quo" by placing into its regulations what it decined to be the reasonable expectations of its constituents regarding the use of the Site as a race track.

A

Background Facts

Motor vehicle racing and other related activities, including camping, automobile shows, and demonstrations of driving speed and skill have been conducted at the Site since 1957. In 1957, racing and related activities occurred seven days a week. At the inception of such activities, the Town of Salisbury had no zoning regulations.² The operation of the race track, therefore, prior to the enactment of zoning regulations, was a preexisting, nonconforming use.

² Although the Town of Salisbury created a zoning commission in 1955, it did not adopt zoning regulations until June 8, 1959.

Adams v. Vaill: The Injunction Action

In 1958, in response to the presence of the race track, and related undesired activities, a group of local citizens and institutions brought a private nuisance action, *Adams v. Vaill*, supra, Superior Court, Docket No. CV-58-0015459-S. The defendants were B. Franklin Vaill, the owner of the Site, and The Lime Rock Corporation (LRC), the lessee of the Site and operator of the race track. The action was brought by twenty-five individuals, mostly residents and property owners in the village of Lime Rock, and two institutions, the Trinity Episcopal Church of Lime Rock (Church)³ and the Lime Rock Cemetery Improvement Association (Cemetery). The plaintiffs claimed that the use of the race track constituted a nuisance, and they sought to abate this nuisance by means of permanent injunctive relief. Given that the injunction is the original source of regulation at the Site, it is necessary to undertake a careful review of the allegations in *Adams*.

The Adams plaintiffs alleged the following facts. For more than twenty-five years prior to 1957, the village of Lime Rock was a "quiet, peaceful and secluded residential area" of Salisbury with little commercial activity. Starting in early 1957, LRC used the Site as a sports car race track, hosting races and exhibitions almost every weekend when weather and driving conditions permitted. Even when no formal events took place, drivers used the track to test their cars and practice racing. This activity began as early as 9:00 a.m. and went as late as 11:00 p.m., and sometimes lasted for up to ten consecutive hours. "[C]onsiderable noise," arising from the racing activity, included the roar of car engines when accelerating at high and low speeds, generally "without mufflers or other devices to silence" the engine exhaust; the revving of

³ The Church was not an original plaintiff, but was added shortly after the complaint was served.

"unmuffled engines of cars at a stand still;" the "loud screeching of tires and squealing of brakes;" the "noisy changing of gears;" and announcements emanating from loudspeakers and amplifiers. The noise could travel as far as two and one-half to three miles. While attending events at the track, racing fans drove their own cars recklessly and without consideration of the rights of others, "often with loud noises occasioned by operation with cut-outs or without mufflers." The attendees also sped and raced on public roads, and engaged in horn honking and other boisterous conduct. The racing fans created such heavy traffic that the plaintiffs were denied normal access to and from their homes. The fans violated the plaintiffs' property rights by trespassing on their land, turning vehicles on their lawns, throwing beer cans and other litter on private property, and "using [one plaintiff's] property to relieve calls of nature." This behavior continued despite complaints to the police. Noise associated with the racing activity prevented the plaintiffs from occupying their homes with comfort and, in some instances, forced some plaintiffs to either close all of their windows and "retire to the basement" or to leave their homes. The noise was "annoying, irritating and disturbing, both physically and emotionally," and caused some of the plaintiffs to be "seriously nervous and upset." The noise menaced the health of the plaintiffs, lowered property values, prevented homes from selling and being leased, and caused the Cemetery to padlock its grounds on race days.

The Church alleged that the arrival of racing fans "before, during and immediately after the hours of worship," and the attendant "noise, racket and behavior . . . [would] intrude upon, disturb and interfere with the conduct of worship of said Church, deter some of its communicants from attending church services," and "hamper [churchgoers'] access to and egress from" the Church, thereby "endanger[ing] their safety." The Church further alleged that it could no longer

schedule religious rites on race days, and that the rectory's inhabitants could not peacefully enjoy their home.

The foregoing allegations demonstrate that noise was the plaintiffs' primary, although not exclusive, grievance. On May 12, 1959, after a hearing, the court, Shea, J., entered judgment in favor of the plaintiffs by granting a permanent injunction. The court issued a memorandum of decision, setting forth its findings and holding that noise generated by the track's operation constituted a nuisance.4 In reaching this decision, the court held that "[s]ound may be a nuisance, even in the prosecution of a business lawful per se" and that to "constitute a nuisance the use must be such as to produce a tangible and appreciable injury to neighboring property or such as to render its enjoyment especially uncomfortable or inconvenient." Memorandum of Decision May 12, 1959. The court further held that "when [noises] reach the point where they become annoying, irritating and disturbing to the comfort and rest of the nearby residents of ordinary sensibilities to the extent outlined above, [noises] ought to be so classified [as a nuisance]." Id. In finding that noise from the Site constituted a nuisance, the court further held that the "operation of the race track on Sundays proves to be especially annoying and irritating to the plaintiffs. They are justified in making complaint about the disturbing annoyance and discomfort which is caused by the operation of the race track in any form on Sundays. This activity should be prohibited."

The court found that track noise that constituted a nuisance included "the noise and roar of car engines caused by the operation of the vehicles upon the track," as well as "the squealing

⁴ The court rejected the plaintiffs' claims of motor vehicle violations and heavy traffic, finding that many witnesses commended the State Police for their work in defusing these issues. The court held that, "[a]t the present time there is little or no complaint about the traffic problem or the manner in which it is handled."

of brakes, screeching of tires, and other noises emanating from the operation of the cars upon the track" and noise coming from the track's loudspeaker.

Notably, the court underscored the additional volume of noise that arose when car engines were not mufflered, finding that during "weekdays the engines of the cars which are operated upon the track are usually mufflered, but this is not uniformly true and the noise, of course, is much greater when the engines are not mufflered." The court also found that during "racing events or speed tests, and particularly on weekends, the events are often held with unmufflered engines. These events cover an extended period of time. On certain occasions they are carried on continuously for a period of hours. The noise and sounds, particularly when the vehicles are unmufflered, reach such intensity that they can sometimes be heard for some distance beyond the village depending upon the wind and atmospheric conditions."

After considering the legal standards relative to the creation of a nuisance, the court, once again, emphasized the impact of unmufflered racing on its decision: "In applying these principles of law to the case before us, it becomes evident at once that a single or isolated use of the race track does not constitute a nuisance in and of itself. The noise becomes irritating, annoying, and disturbing to the comfort of the community when the race track is used by unmufflered engines for an extended number of hours. In fact, there is little or no complaint to be made against the operations upon the track when it is used by vehicles which are mufflered." As mentioned above, after finding that the "residents of Lime Rock often invite visitors and friends to spend the weekend there and to enjoy the peaceful surroundings of the beautiful countryside," and that the "operation of the race track on Sundays proves to be especially annoying and irritating to the plaintiffs," the court prohibited Sunday racing. The court then found that "the noise does not have the same effect on other days, and the track could be operated on every other day of the

week provided, however, that the events with unmufflered engines should be limited in number and space of time."⁵

As a result of these findings, the court entered a permanent injunction in favor of the *Adams* plaintiffs. This permanent injunction prohibited "[a]ll activity upon the track . . . on Sundays;" limited mufflered racing to weekdays between 9:00 a.m. and 10:00 p.m., except for six days per year when racing could continue beyond 10:00 p.m.; and permitted unmufflered racing between specified hours only on Tuesdays and ten Saturdays each year (as well as the ten Fridays that preceded those ten Saturdays for the purpose of preparing for the Saturday races), and the following holidays between the hours of 9:00 a.m. and 6:00 p.m.: Memorial Day, the Fourth of July and Labor Day. The injunction also referred the parties to General Statutes § 14-80 (c) for the definition of what constituted "permissible mufflers." Judge Shea's decision also imposed a penalty on each of the defendants of \$10,000 for violating any provision of the permanent injunction.

 \mathbf{C}

Original Salisbury Zoning Regulations

Shortly after the *Adams* decision, on June 8, 1959, the Comm'n adopted zoning regulations and a zoning map. The zoning regulations placed the Site in the Rural Enterprise (RE) District, and, significantly, allowed race tracks as a permitted, as of right use within the RE District. Salisbury Zoning Regs., § 8.1.17. The Site was the only race track operating in the RE District. The regulations allowed a "track for racing motor vehicles, excluding motorcycles, to which admission may be charged, and for automotive education and research in safety and for

⁵ Notably, the court did not find that unmufflered racing created additional traffic, or enhanced air or light pollution because it was more popular than mufflered racing. This lack of findings is relevant to one argument of the Comm'n, which will be addressed infra.

performance testing of a scientific nature." Id. These regulations also permitted such accessory uses as "grandstands, judges' stands, automobile repair pits, rest rooms, lunch counters or stands ... use of the premises for automobile shows and exhibitions, for the sale of motor vehicles, automotive parts and accessories and fuels, for manufacturing and automotive repair incident to the other activities herein permitted, [and] may also include the production of television, motion picture or radio programs and the use of necessary lighting and sound equipment therefor." Id., § 8.1.17.7.

Additionally, the regulations allowed racing "during such hours as are permitted by statute." Id. At that time, the controlling statute provided, in relevant part, that any "race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition . . . may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances." General Statutes § 898c, as amended by Public Acts 1939, No. 23, § 2.6

No provision of any then-existing Town ordinances prohibited or limited racing after two o'clock on Sunday afternoon. As a result, the original zoning regulations were at odds with Judge Shea's injunction. While the May 12, 1959 injunction prohibited Sunday racing, the June 8, 1959 zoning regulations allowed Sunday racing after two o'clock p.m.

D

Modification of the Adams Injunction

Even though the *Adams* injunction was permanent, it has been, nonetheless, modified several times. The first modification occurred by way of a March 2, 1966 stipulation, entered

⁶ This statute also required that the Commissioner of State Police issue a permit prior to such a race taking place. Id., §§ 1-2.

into by the original plaintiffs and defendants, further limiting the use of the Site for racing and related activity. Specifically, the stipulation provided that the prohibition on Sunday racing applied to both "mufflered" and "unmufflered racing cars;" extended the Sunday prohibition to the "paddock areas;" added a definition of "racing car;" and further limited the Friday unmufflered race preparation by specifying that "no qualifying heats or races shall be permitted on such Fridays." Other limitations, not part of the original permanent injunction, were incorporated via this stipulation, including a prohibition on revving or testing of any racing car engines on Saturdays and permitted holidays before 9:00 a.m. and after 6:00 p.m., except for the transportation of the vehicles to and from the paddock areas or on their trailers. Such transportation could not take place before 7:30 a.m. or after 7:30 p.m. The stipulation also banned the use of loudspeakers at the track before 8:00 a.m. and after 7:00 p.m.

The second modification resulted from litigation activity, as opposed to a stipulation.

Upon discovering that the state legislature had, in 1967, amended General Statutes § 14-80 (c) by expanding the mufflering requirement to the operation of motor vehicles in all places and not only when "operated upon a street or highway," see *Adams* v. *Vaill*, supra, 158 Conn. 481, some, but not all, of the original *Adams* plaintiffs ⁷ filed, on July 29, 1968, a motion to modify the 1966 stipulation to which they had entered with the Park's predecessor. These *Adams* plaintiffs argued that, based on the statutory amendment, the court must modify the 1966 stipulation to prohibit, at all times, the racing of unmufflered vehicles at the Park. Id., 482. The court, *Wall*, *J.*, agreed. The court issued an order on August 26, 1968, modifying the injunction by "prohibit[ing] the operation and use of unmufflered motor vehicles on the Lime Rock race track." *Adams* v. *Vaill*,

⁷ The Adams plaintiffs who moved to modify the injunction were thirteen in number: Ann Adams, Herbert Oscar Bergdahl, Grace Bergdahl, Herbert O. Bergdahl, Jr., Helen Heffner, Elizabeth Hetherington, Agatha Mallach, Ralph McLellan, Florence McLellan, Annie M. Olsen, Jack Olsen, Lillian H. Roberts and Moritz Wallach.

Superior Court, judicial district of Litchfield, Docket No. CV-58-0015459-S (August 26, 1968, Wall, J.). The court's ruling further ordered the defendants to "cease and desist immediately from sponsoring the racing of said unmufflered vehicles." Id. This 1967 order was upheld on appeal in 1969 by our Supreme Court. Adams v. Vaill, supra, 158 Conn. 478. In reaching its decision, the Supreme Court held that, "courts have inherent power to change or modify their own injunctions where circumstances or pertinent law have so changed as to make it equitable to do so." Id., 483. Specifically, the Supreme Court found that the legislature's amendment prohibiting the operation of unmufflered vehicles anywhere constituted such a change in "pertinent law." The Supreme Court held that, "where the court's decree expressly authorized unmufflered automobile racing and, by subsequent action of the General Assembly, the operation of an unmufflered motor vehicle anywhere in the state became illegal, it cannot be held that the court committed error in modifying the injunction so that it did not purport to authorize an activity which the statutes prohibited." Id., 484. The Supreme Court reached this conclusion even though it knew, when it issued its decision, that the statutory amendment on which it relied had been undone. Id., 482-84, 484 n.1.8 Beginning on August 26, 1968, therefore, unmufflered racing was prohibited at the Park.

⁸ Footnote one stated that "[w]e do not overlook the fact that the General Assembly, in its 1969 session, further amended subsection (c) of General Statutes § 14-80 to provide an exception to this prohibition by adding the clause 'when such motor vehicle is operated in a race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition in accordance with the provisions of subsection (a) of Section 29-143. Public Acts 1969, No. 17." Although such a further amendment might have rendered the 1969 Supreme Court decision moot, the Supreme Court found that the amendment did not do so. The Supreme Court cryptically noted that "[t]his subsequent amendment, however, does not render the present appeal moot since it appears that there is litigation pending, the outcome of which is dependent, at least in part, upon the legality of the existing injunction as modified." The Supreme Court did not identify such "pending litigation" and neither the existing Adams trial court file nor the Supreme Court Records and Briefs contain any motions or pleadings that would inform this court as to the nature of this "pending litigation."

In 1988, in part to end this prohibition, two new parties, namely a substituted plaintiff, the Lime Rock Protection Committee, Inc. 9 and the then-owner of the Park, Lime Rock Associates, Inc. entered into a stipulation. The preamble of this stipulation expressly stated that the parties wanted to make two changes to the 1968 judgment and injunctive order, namely (1) to eliminate motorcycle racing, and (2) to modify the prohibition on unmufflered racing in light of the legislature's 1969 amendment. In 1969, as mentioned above, the state legislature allowed the unmufflered operation of motor vehicles used in public racing. This stipulation accomplished those two goals, prohibiting motorcycle racing and reinstituting unmufflered racing with the same restrictions that existed in the 1966 stipulation. On March 21, 1988, the court, *Dranginis*, *J.*, approved the motion to amend the judgment in accordance with the stipulation. The 1988 stipulation did not include the \$10,000 penalty for violations of the amended injunction.

Е

Appeals of Salisbury ZBA Decisions

Beginning in 1977, a series of appeals were taken from decisions of the Salisbury Zoning Board of Appeals' (ZBA) determination of what constituted "permitted activities" at the Site.

The first such action, brought by the then-owner of the Site, the Lime Rock Foundation, Inc.

The parties did not identify any of the incorporators, officers, directors, constituent members or shareholders of the Lime Rock Protection Committee, Inc. at the time of this stipulation or, for that matter, at any time. The court takes judicial notice of the facts that (1) the two cases brought by the Lime Rock Protection Committee, Inc. discussed below in section E, allege that the Committee is a non-stock corporation organized for the purpose of "minimizing noise and other forms of annoyance which result from the operation of a race track," and that the "officers, board of directors and members of the Committee are residents and taxpayers of" Salisbury, (2) the Secretary of State's CONCORD system reflects that one Joan C. Bergdahl was the agent for service of process of this corporation and (3) the court's files in the cases that led to the ZBA Judgment reveal that Joan C. Bergdahl was president of this corporation in the late 1970's and that Jack Olsen, Herbert O. Bergdahl, Jr. and Albert Tilt, Jr. were members of the Committee at that time. The review of these court files further evidences that Joan C. Bergdahl's property abutted the Site, as did Jack Olsen's. The 1988 stipulation also evidences that Joan C. Bergdahl executed it on behalf of the Lime Rock Protection Committee, Inc.

(Foundation), appealed an August 5, 1977 decision of the ZBA upholding the Comm'n's limitation on the number of campers at the Site to 1,000 at any given time. Lime Rock Foundation, Inc. v. Zoning Board of Appeals, Superior Court, judicial district of Litchfield, Docket No. CV-77-0016404-S. After the appeal was filed, the ZBA agreed to raise the limit to 1,500 campers at a time. Id. The Foundation claimed that the 1,500 person limitation was illegal, arbitrary, and constituted an abuse of discretion because the track was a "valid nonconforming use which cannot be limited in this manner." Id.

Almost immediately after the Foundation filed its appeal, the Lime Rock Protection Committee (Committee) and three individual abutting neighbors of the track, Herbert O. Bergdahl, Joan C. Bergdahl and Jack Olson, sued the Foundation and the ZBA, also alleging that the ZBA's decision to raise the number of campers to 1,500 was illegal, arbitrary, and not supported by record evidence. Lime Rock Protection Committee v. Lime Rock Foundation, Inc., Superior Court, judicial district of Litchfield, Docket No. CV-77-0016416-S. In this appeal, the plaintiffs alleged that the Comm'n, in an August 5, 1977 decision, issued a ruling that camping at the track was "a permitted use of said property" subject to the following limitations: (1) camping was confined to the infield; (2) camping could not include spectators; and (3) camping could not exceed more than 1,000 campers at a time. The plaintiffs further alleged that, after the Foundation appealed the August 5, 1977 decision, the ZBA modified said decision by (1) dispensing with the requirement that camping be confined to the infield; (2) allowing campers to include spectators; and (3) increasing the allowed number of campers at any one time to 1,500. The plaintiffs alleged that the ZBA acted illegally because (1) camping is not a permitted use in the RE Zone, where the Site is located, and the zoning regulations do not otherwise permit such a use, and (2) the type of camping that existed prior to the 1959 zoning regulations was

substantially different in nature, type and degree from that permitted by the ZBA, in that prezoning camping (a) did not include spectators; (b) was limited to the infield; (c) was limited to far less than 1,500 campers; (d) took place over shorter time periods; and (e) was far less objectionable in nature. The plaintiffs further claimed that the ZBA's action was illegal because it permitted a use not in harmony with the "general purpose of the Zoning Regulations of the Town of Salisbury and is contrary to public policy," and did not attempt to conserve the public health, safety, convenience, welfare and/or property value of the plaintiffs and of other Town residents. Finally, the plaintiffs alleged that the ZBA's action was undertaken pursuant to defective notice.

In the third action, filed in 1978, the Committee and the same three individuals, ¹⁰ all abutting landowners, brought another action against the Foundation and the ZBA. *Lime Rock Protection Committee, Inc.* v. *The Lime Rock Foundation, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-78-0016920-S. In the third action, the plaintiffs asserted that, at their request, the Comm'n had issued, on May 20, 1975, an order enforcing a zoning regulation that required a buffer strip between the race track and its neighbors, but that the Foundation did not comply with this order and that the Comm'n never enforced the order. The plaintiffs took an appeal seeking enforcement of the order, which was denied by the ZBA. The plaintiffs alleged that the actions of the ZBA were illegal because (1) it failed to require the Comm'n to enforce the buffer strip regulation; (2) its action was not supported by record evidence; (3) it permitted a use not in harmony with the general purpose of the zoning regulations and violative of public policy; (4) it failed to consider public health, safety, convenience, welfare and/or property values of the plaintiffs and other Salisbury residents; and (5) it provided defective notice.

¹⁰ The original plaintiffs were Lime Rock Protection Committee, Inc., Joan C. Bergdahl and Jack Olson. It appears that Herbert O. Bergdahl was added at a later date as a plaintiff.

All three appeals were resolved by one stipulation for judgment dated May 31, 1979, with judgment entered in each file on September 19, 1979 (ZBA Judgment). The stipulation did not mention any provision of the zoning regulations, but simply recited that the track's owner was permitted to use the Site for camping for an unlimited number of spectators and participants at any events held there, subject to the following restrictions: (1) camping was limited to the infield; (2) no non-official motor vehicles were allowed to be parked in the outfield, except between 6:00 a.m. and 10:00 p.m.; (3) the track entrance running past the Reed Williams property was closed between 11:00 p.m. and 6:00 a.m. to all camping traffic; and (4) the 1978 case (Docket No. CV-78-0016920-S) was dismissed with prejudice.

The judgment in each of the two 1977 cases (Docket Nos. CV-77-0016404-S, CV-77-0016416-S), although identical in all significant respects, also augmented the stipulation by construing "the nonconforming use" of the Site to permit camping by an unlimited number of spectators and participants as an accessory use to permissible car racing events subject to certain restrictions, including: (1) camping and camping vehicles were confined to the infield of the race track; (2) no motor vehicles were to be parked in the race track outfield between 10:00 p.m. and 6:00 a.m., except for those on official track business, which had to be parked in the parking lot area adjacent to the track office; and (3) the back road and the race track entrance, which abutted the Reed Williams property were to be closed, between 11:00 p.m. and 6:00 a.m., to all traffic except for emergency and service vehicles.

F

Zoning Regulation Amendments

From June 8, 1959, though the 1967 version of the zoning regulations, racing at the Site was a permitted use but, in 1975, over the objection of the Park's predecessor, the Comm'n

voted to change the use of the Site from a permitted use to one allowed pursuant to a special permit. There is no evidence, however, that since this change, the Park or any of its predecessors have ever sought a special permit for its main uses, i.e., racing and exhibitions. Conversely, there is also no evidence that the Comm'n ever sought to require, in any formal way, that the Park or its predecessors apply for a special permit to operate.

The May 12, 1967 version of the zoning regulations still stated, as did the 1959 version thereof, that "[n]o races shall be conducted on any such track except during such hours as are permitted by Statute." At some time after March 11, 1974, and before February 23, 1981, however, the relevant zoning regulations were amended in a very critical way. Significantly, at this time, Regulation 415.1, the provision regulating racing times, pivoted from the relevant state statute to the permanent injunction.

This amendment to the regulations is the critical amendment previously referred to in Section I of this memorandum of decision. While it would be extremely helpful for the court to understand the circumstances under which this regulation was amended, including whether this amendment was enacted properly, the Comm'n cannot locate this documentation.¹² The Comm'n

¹¹ The court arrived at this range of dates by considering the following facts. The March 11, 1974 revision of the zoning regulations still provided that racing times were governed by the state statute. The typed copy of the 1974 regulations includes handwritten notations that the regulations were further amended on August 27, 1976, June 22, 1979, February 21, 1980 and February 23, 1981. A handwritten cross-out of section 415.1 provides that no "races shall be conducted on any such track except during such hours as are permitted by court order dated 5.12.59." The court infers that the handwritten cross-out was contemporaneous with one of the revisions noted in handwriting on the typed, March 11, 1974 version of the regulations, but the actual date of the revision was not noted.

¹² The amendment under our law is entitled to a presumption that it was enacted lawfully. See *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, 220 Conn. 527, 542, 600 A.2d 757 (1991) (presumption that a zoning commission is acting within the statutory authority granted to it by § 8-2); see also *Bauer* v. *Waste*

was able to provide the court with only a reference in the Comm'n's minutes to this amendment. See #161, attachment H, p. 146. In what the court construes to be the minutes of the Comm'n for the February 10, 1975 meeting, after a "Regular Meeting" that convened at 8:00 p.m., the members "[a]djourned to Mr. Athoe's Office" at "9:07 p.m." Since this portion of the meeting is distinguished from the "Regular Meeting," the court finds that this was an executive session of the Comm'n. During this executive session, a nine-page letter from a group called the Lime Rock Protection Association was presented and discussed by "J. Brock." The minutes indicate that the "court injunction of 1959 is more restrictive than the zoning regulations. The court injunction pertained only to racing. . . ." The minutes proceed to state that "Wilson made point that P. & Z. cannot stop racing at the track but by Regulation 415.1 can enforce injunction imposed racing times."

Ç

The amendment that ensued effected a radical change in the zoning regulations. Whereas the previous version of the regulations allowed racing during the hours permitted by statute, this amendment stated that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59." This amendment did not specify what these hours were, but simply referred the reader to the 1959 order. Thus, it would be necessary to locate the 1959 order to discover the permitted hours of racing. Additionally, this amendment did not acknowledge that the 1959 order had been amended by stipulation in 1966 and by means of a motion to modify in 1968.

The last version of the zoning regulations prior to the amendments at issue, the May 26, 2013 regulations, specified that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59 and subsequent Court Orders on file in

Management, 234 Conn. 221, 258, 662 A.2d 1179 (1995) (zoning regulats are entitled to a presumption of validity).

the Planning and Zoning Office, or the Town Clerk's Office." The 2013 regulations did not clearly set forth what these "permitted" hours were, and further did not include a specific reference to days of operation. Moreover, the 2013 regulations did not incorporate, by reference, the ZBA Judgment and did not contain any provisions as to camping, parking, or traffic on access ways to the track. Consequently, to determine the permitted hours of racing under the 2013 version of the zoning regulations required one to refer to the most recent version of the injunction.

The 2015 amendments were proposed by the Comm'n on or before July 20, 2015, and adopted on November 16, 2015. Portions of Sections 221.1 and 221.3 of these amendments¹³ are the subject of the present appeal. The sections at issue will be set forth in more detail infra in this amended memorandum of decision.

G

Special Issues Arising from the Table of Uses

The zoning regulations have, since at least 1967, contained a separate Table of Uses setting forth which uses are permitted as of right and which only by special permit in the various zoning districts. A review of pre-1975 regulations reveals that, when the Comm'n began to employ a

expanding a list of various uses that are incidental and accessory to a race track use; modifying the Table of Uses to specify that a race track is a use allowed by special permit in the RE District; adding a definition of "motor vehicle" that is derived from state statute; and providing that certain temporary uses associated with racing, even though not incidental or accessory thereto, may be allowed by special permit. Moreover, initially, the 2015 amendments also added Section 221.6, a severability clause, providing that, if one portion of the regulations were found by a court to be invalid, all of the other provisions would be invalid as well. Section 221.6 also contained what the Park termed an "in terrorem" clause. This clause provided that, if the Park were to successfully challenge one or more provisions in the amended regulations, then a track for racing motor vehicles shall be found not to be permitted in the RE zoning district. The Park challenged this section on appeal, and the Comm'n, in a public hearing on March 30, 2016, repealed Section 221.6. Therefore, Section 221.6 is no longer before the court on this appeal.

Table of Uses, the race track was listed as permitted as of right. After the 1975 zoning amendment making the race track a specially permitted use, the Tables of Uses listed the race track a specially permitted use. However, the 2004 Table of Uses neglected to list a track for racing motor vehicles as either a permitted use or a use requiring a special permit in any zoning district. The 2008 Table of Uses corrected this oversight by listing a track for motor vehicle racing as a use allowed by special permit in the RE district. The 2013 regulations, once again, however, omitted to list a track for motor vehicle racing as a permitted or specially permitted use in any zoning district.

Because the zoning regulations state that any uses of land that are not allowed as permitted uses or by special permit or otherwise allowed are prohibited, Zoning Regulations Section 102.a, the failure to list the motor vehicle racing track as a permitted or specially permitted use, even though inadvertent, meant, strictly speaking, that the use was prohibited. See, e.g., *Gada* v. *Zoning Board of Appeals*, 151 Conn. 46, 48, 193 A.2d 502 (1963). Counsel for the Comm'n made this point during the deliberative session on the 2015 amendments, but later that evening pointed out that the failure to include the track on the table of uses was a mistake that would be rectified under the amendments. As mentioned in footnote 13 of this memorandum of decision, the 2015 amendments fix this problem by listing a motor vehicle racing track as a use by special permit in the table of uses for the RE district.

Η

Summary of Confusing, Imprecise and Inconsistent Regulation of the Park

A great amount of confusion has been engendered by the manner in which the Park's use
of the Site has been regulated over time. To illustrate this point, the court will examine three

major regulatory issues: (1) the categorization of use of the Site for motor vehicle racing; (2) Sunday racing and (3) the treatment of the ZBA Judgment.

(1)

Categorization of the Use at the Site

When the track began operations, there were no zoning regulations in Salisbury. Initially, therefore, there were no restrictions as to this use. Because the track existed prior to the enactment of zoning regulations, it was a pre-existing, nonconforming use. The use prior to the existence of Town zoning regulations included Sunday racing. When the zoning regulations were first adopted, in June, 1959, motor vehicle racing at the Site was listed as a permitted use. It remained one until 1975. As previously mentioned, in 1975, the Comm'n changed the designation of motor vehicle racing at the Site to one of use by special permit. However, neither the Park nor any of its predecessors have ever applied for a special permit. The Comm'n has never formally required the Park to apply for a special permit. No special permit has, therefore, ever been granted. To exacerbate this problem, in 2004, for four years, and in 2013, for two years, the Comm'n forgot to list motor vehicle racing as a specially permitted use in the RE zoning district on the applicable section of the Table of Uses. Even though the Comm'n now acknowledges that the omission was done in error, strictly speaking, the failure to list meant that the use of the Site for motor vehicle racing was prohibited between 2004 and 2008, and between 2013 and the enactment of the 2015 regulations, which, once again, placed the Park in the Table of Uses as a specially permitted use..

During the deliberative session considering the 2015 amendments at issue, the Comm'n's chairman made several comments that underscore the historically jumbled nature of the

regulation of the Park's racing activities. ¹⁴ During that session, the chairman first stated that "de facto [the Park] has right now a special permit, though it doesn't apply for one, it's operating as a permitted special permit without the permit." The chairman further stated that "so here we have a permitted use, they have not come in for a special permit. We've accepted that through practice." The chairman finally stated that "[i]n a way, those standards in that injunction in a sense de facto form the basis of the permitted use that doesn't have the special permit right now . . . that's basically what it is." Most significantly, the chairman summarized the Comm'n's goals as "defining for the first time that it's this permitted use subject to a special permit that does not have a special permit from an accident of history or evolution; but these are the parameters." ¹⁵

(2)

Regulation of Sunday Racing

The history of Sunday racing is also fraught with inconsistencies. Prior to the May 12, 1959 injunction in *Adams*, the Park's predecessors conducted Sunday racing. Although the May 12, 1959 injunction prohibited Sunday racing and exposed the Park's predecessor to a \$10,000 fine for, inter alia, violating that portion of the injunction, less than one month later, on June 8, 1959, acting as if it were unaware of the less than one month-old injunction, the Comm'n enacted, as discussed above, zoning regulations which allowed Sunday racing after two o'clock in the afternoon pursuant to the relevant state statute. The patent inconsistency of the injunctive

¹⁴ The court understands that these comments are not part of the formal statement of reasons for the amendments, but cites to these comments merely to explain the confused status of the regulation of the Site at the time of the amendments.

Moreover, as discussed infra, there is case law holding that, at least to some degree, a preexisting, nonconforming use runs with the land, notwithstanding any change to the characterization of the use as otherwise permitted or specially permitted. This concept was evidenced in the ZBA Judgment. Although issued four years after the Comm'n changed the categorization of the Site use from permitted to specially permitted, the ZBA Judgment termed the use of the Site, as least as far as camping and parking were concerned, as "nonconforming."

prohibition of Sunday racing existing side by side with the zoning regulations permitting Sunday racing after two o'clock p.m. persisted, as discussed previously in footnote 11 of this memorandum of decision, for a significant amount of time, at least from 1959 through 1974, and possibly until 1981. At that time, the regulations were amended to refer to the hours of operation permitted in the 1959 injunction, as opposed to those hours permitted under the statute. There is no evidence before the court that, during the extended period of time of this discrepancy between what the *Adams* injunction prohibited, e.g., Sunday racing, and what the zoning regulations allowed, e.g., Sunday racing after two o'clock p.m., the Park's predecessor(s) ever sought to race on Sundays. ¹⁶ In other words, despite the permission granted by the regulations over at least fifteen, and possibly as many as twenty-two years, the Park's predecessors abided by the injunction's prohibition on Sunday racing.

From the time of the zoning regulation amendment referring parties to the 1959 order for guidance on Sunday racing, on forward, through and including the 2013 version, the zoning regulations never specified what the permitted hours of racing were, but merely referred the reader to the 1959 injunction, or to revisions thereof. The zoning regulations during this time never even told the reader where to find the 1959 injunction, or any modifications thereof, until 2013, when the regulation directed anyone interested to the 1959 order or "subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." As the Comm'n pointed out in argument, had the *Adams* injunction been modified at any time when the regulations incorporated it by reference to set forth hours of racing, the regulations would, ipso facto, have been amended without the benefit of the required administrative process.

¹⁶ In fact, the Comm'n's counsel volunteered during the deliberative session, that, "I'm not aware there's been violations [by the Park of any restrictions imposed by the injunction or its modifications]."

Even counsel for the Comm'n found the 2013 regulations to be ambiguous in regard to Sunday racing. During the deliberative session on the amended regulations, when discussing the incorporation by reference of the injunction's prohibition on Sunday racing, the Comm'n's counsel commented that "someone coming in for the first time wouldn't know what that lawsuit [the *Adams* suit] is." Shortly after that comment, the Comm'n's counsel stated, when discussing versions of the court order on file with the Town, "[s]o what if there's five court orders in the office, and there are. There's '59, '66, there was '88. So what is it? I mean just from a point of view what does it mean and what are you referring to? Yeah, I think it's a good idea to not have ambiguity but to say what it is." In referring to times of operation, counsel for the Comm'n concluded by saying that "I think it's important to remove the ambiguity of what it is."

(3)

Ambiguity about the ZBA Judgment

The zoning regulations, prior to the 2015 amendments, never addressed the issues decided in the ZBA Judgment pertaining to camping and parking. However, the Comm'n, in the formal statement of reasons it adopted in support of the 2015 amendments, nonetheless, termed the ZBA Judgment part of the Town's zoning "present status quo." During the deliberative session in which the Comm'n approved the 2015 amendments, counsel for the Comm'n first stated that the actions giving rise to the ZBA Judgment "involved... an interpretation of the regulations," and then described the ZBA Judgment as being "part of the zoning status." Counsel for the Comm'n later described the ZBA Judgment as "part of our zoning scheme." The formal statement of reasons adopted by the Comm'n further refers to the ZBA Judgment as "restrictions that are already part of the Town's zoning scheme," and states that positing "the standards in the regulations themselves allows the affected property owners to know what the zoning restrictions

are without having to review outside documents." Even though the provisions of the ZBA were never, prior to the 2015 amendments, part of the Town's zoning regulations, the Comm'n viewed the incorporation of the provisions of the ZBA Judgment into the 2015 regulations as simply a codification of language already governing the use of the Site with regard to camping, parking and the other issues addressed in the ZBA Judgment.

Ш

STANDARD OF REVIEW¹⁷

As a threshold matter, aggrievement is a prerequisite to maintaining a zoning appeal, and the Park bears the burden of proof that it is aggrieved by the Comm'n's decision to amend its regulations. Unless an appellant pleads and proves aggrievement, the case must be stricken for lack of subject matter jurisdiction. In the present case, the parties have stipulated to facts which allow this court to make a finding that the Park is aggrieved. See *Hughes* v. *Town Planning & Zoning Commission*, 156 Conn. 505, 509, 242 A.2d 705 (1968); *Hendel's Investors Company* v. *Zoning Board of Appeals*, 62 Conn. App. 263, 270-71, 771 A.2d 182 (2001); R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 32:3.

A local zoning commission, acting in a legislative capacity, has broad authority to enact or amend zoning regulations. Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, 220 Conn. 527, 542, 600 A.2d 757 (1991); Arnold Bernhard & Co. v. Planning & Zoning Commission, 194 Conn. 152, 164, 479 A.2d 801 (1984). "Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change." (Internal quotation marks omitted.) Protect Hamden/North

¹⁷ This section has been redrafted based on the arguments made in the various motions to reconsider.

Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 543.

The broad discretion of local zoning authorities acting in their legislative capacity is not, however, unlimited. Damick v. Planning & Zoning Commission, 158 Conn. 78, 83, 256 A.2d 428 (1969). "Zoning is an exercise of the police power. . . . As a creature of the state, the . . . [Town . . . whether acting itself or through its planning commission,] can exercise only such powers as are expressly granted to it, or such powers as are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation. . . . In other words, in order to determine whether the regulation in question was within the authority of the commission to enact, we do not search for a statutory prohibition against such an enactment; rather, we must search for statutory authority for the enactment. . . . If the legislation is [a zoning] ordinance, it must comply with, and serve the purpose of the statute under which the sanction is claimed for it. A local zoning commission is subject to the limitations prescribed by law [and] [t]he power to zone [is] not absolute but [is] conditioned upon an adherence to the statutory purposes to be served." (Citations omitted; internal quotation marks omitted.) Builders Service Corp. v. Planning & Zoning Commission, 208 Conn. 267, 274-75, 545 A.2d 530 (1988).

General Statutes § 8-2 is the statutory source of authority for the 2015 amendments. "The test of the action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan, General Statutes § 8-2 . . . and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2" (Citations omitted; internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 543-44; see also Arnold Bernhard & Co. v. Planning & Zoning Commission, supra, 194 Conn. 159 ("General Statutes § 8-2 delegates broad authority to municipalities to enact local zoning regulations").

In order to describe "normal" police powers delegated to local zoning commissions under § 8-2, our Supreme Court, has referred, in one case, to the following language in § 8-2:

"[Z]oning regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements." (Internal quotation marks omitted.) First Hartford Realty Corp. v. Plan & Zoning Commission, 165 Conn. 533, 541 n.1, 338 A.2d 490 (1973). Elsewhere, our Supreme Court has further described the zoning police powers as those that, inter alia, advance the "prosperity of the community" (Internal quotation marks omitted.) Corthouts v. Newington, 140 Conn. 284, 288, 99 A.2d 112 (1953); see Builders Service Corp. v. Planning & Zoning Commission, supra, 208 Conn. 283; State v. Hillman, 110 Conn. 92, 100, 147 A. 294 (1929).

Noted commentator Professor Terry Tondro places a finer point on the zoning police power under § 8-2, positing that "Section 8-2... is the basic statement of the purposes for which the zoning powers may be exercised." T. Tondro, Connecticut Land Use Regulation (Cum. Supp. 2000), p. 53. Tondro notes that the language employed in § 8-2 includes "very general" language, particularly in the older portion of the statute, as well as more specific language from the new portion of the statute. Id. He further posits that the "present language permits zoning powers to be used" in the following relevant ways: "[T]o regulate the location and use of structures [and land] for trade [and] industry," and "to conserve the value of buildings; [and to] encourage the most appropriate use of land throughout the municipality." Id., pp. 53-54.

After reviewing numerous cases interpreting the zoning powers delegated to a local commission, Tondro makes the following salient observations. First, "the zoning purposes recited in C.G.S. § 8-2 are simply statements about the subjects the zoning commission may consider, rather than policy objectives municipalities are directed to achieve. They indicate neither the relative strength of competing considerations, nor how to evaluate any one of them. As such, they do little to constrain the discretion of zoning commissions when deciding the objective they will pursue with the power delegated to them." Id., p. 57. Second, a tension exists between a proposition consistently articulated in a long line of unchallenged Supreme Court precedent and the manner in which this proposition has been applied in practice. The proposition is that "the zoning powers" are to be construed "in a limited way because they are in derogation of the common law." Id., p. 44. In fact, a 1988 Supreme Court decision, Builders Service Corp. v. Planning & Zoning Commission, supra, 208 Conn. 274-75, holds that "specific authority to enact a regulation . . . must be provided for in the language of the statute [§ 8-2]," T. Tondro, supra, 18 and that "the ... [town ... whether acting itself or through its planning commission,] can exercise only such powers as are expressly granted to it [by § 8-2], or such powers as are necessary to enable it to discharge the duties and carry into effect the objects and purposes of its creation." (Internal quotation marks omitted.) Builders Service Corp. v. Planning & Zoning Commission, supra, 274. More specifically, "in order to determine whether the regulation in question was within the authority of the commission to enact, we do not search for a statutory prohibition against such an enactment; rather we must search for statutory authority for the enactment." (Internal quotation marks omitted.) Id., 275. Tondro notes, however, that, notwithstanding this very clear Supreme Court guidance, "a long line of zoning techniques and

¹⁸ Accord Capalbo v. Planning & Zoning Board of Appeals, 208 Conn. 480, 490, 547 A.2d 528 (1988).

objectives have been approved by Connecticut courts even though no specific statutory language authorizes them." T. Tondro, supra, p. 44; see id., p. 44 nn. 36-53 (citing decisions granting a zoning body authority to regulate absent specific authorization in § 8-2). From this tension, Tondro concludes that "[i]f there is a pattern, it appears to be one of judicial deference to any local initiative unless it threatens other important constitutional interests as well as threatening private property rights." Id., pp. 47-48.

Assuming that a zoning commission is acting within the statutory authority granted to it by § 8-2, judicial review of a decision to amend zoning regulations is limited. Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 220 Conn. 542. It is a "rare case in which the legislative judgment of what is beneficial to the community can be superceded by that of the judiciary." (Internal quotation marks omitted.) Timber Trails Associates, v. Planning & Zoning Commission, 99 Conn. App. 768, 787, 916 A.2d 99 (2007). "[I]t is not the function of the court to retry the case. Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached." (Internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc., supra, 542-43. A local zoning board's "legislative discretion is 'wide and liberal,' and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally." (Internal quotation marks omitted.) Id., 543; see Stiles v. Town Council, 159 Conn. 212, 218-19, 268 A.2d 395 (1970) ("[c]ourts cannot substitute their judgment for the wide and liberal discretion vested in the local zoning

authority when it is acting within its prescribed legislative powers"). "Courts will not interfere with . . . local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion. . . ." Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 543-44; see Arnold Bernhard & Co. v. Planning & Zoning Commission, supra, 194 Conn. 159 ("General Statutes § 8-2 delegates broad authority to municipalities to enact local zoning regulations"). Our Supreme Court has, however, found zoning amendments to be invalid because they were "not rationally related to any legitimate purpose of zoning as set out in § 8-2," Builders Service Corp. v. Planning & Zoning Commission, supra, 208 Conn. 306, and because they were deemed to be arbitrary, unreasonable, and confiscatory, Corthouts v. Newington, 140 Conn. 284, supra, 288-90.

Applying these principles to the present case, this court must decide if the 2015 amendments at issue are (1) proper exercises of the statutory authority granted to the Comm'n under the police powers set forth in § 8-2, (2) rationally related to the exercise of those powers, and, if so, (3) neither arbitrary, unreasonable, illegal or confiscatory. In making these determinations, the court should consider the Comm'n's statement of reasons. "Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations. . . . The zone change must be sustained if even one of the stated reasons is sufficient to support it. . . . The principle that a court should confine its review to the reasons given by a zoning agency does not apply to any utterances, however incomplete, by the members of the agency subsequent to their vote. It applies where the agency has rendered a formal, official, collective statement of reasons for its action. . . [H]owever . . . the failure of the zoning agency to give such reasons requires

the court to search the entire record to find a basis for the commission's decision." (Citations omitted; internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 220 Conn. 544. Accordingly, to determine whether the 2015 amendments are within the Comm'n's authority, the court first will refer to the Comm'n's formal statement of reasons, and then decide if even one of the officially proffered reasons is reasonably supported by the record. While this formulation sounds simple, its application in the present case is complex, especially with regard to the Park's arguments concerning the restriction on days and hours of racing and the regulation of noise.

TV

PARTIES' ARGUMENTS

The Park's complaint averred that its action is an appeal from "amendments to the Salisbury Zoning Regulations . . . adopted by the Commission on November 16, 2015." Compl. ¶ 2 (#100.30). At the present time, the Park asserts that the Comm'n acted illegally, arbitrarily, capriciously and in abuse of its discretion in several ways. 19

The Park raised three interrelated threshold arguments that arise from § 8-2, which authorizes the Comm'n to adopt zoning regulations. The first of these arguments is that the amendments contravene the requirement of § 8-2 that zoning regulations be in conformity with the comprehensive plan. Second, it is argued that § 8-2 does not authorize the Comm'n to engraft restrictions from both the *Adams* injunction concerning days and hours of racing operation and also from the ZBA Judgment pertaining to camping, parking and use of access

¹⁹ Although the Park originally mounted attacks on the amendments other than those to be listed, infra, it failed to brief some of these arguments, including an improper notice argument and an argument that the new regulations required the Park to seek a special permit for activities it undertook prior to these amendments. The court will not consider the Park's abandoned arguments.

roads onto the Town's zoning regulations. Specifically, the Park claimed that § 8-2 "does not . . . allow a Commission to simply defer to what private individuals have settled upon in private lawsuits without any consideration whatsoever of whether such settlement terms further statutorily sanctioned purposes." Pl. Br. p. 17 (#127). In further support of this argument, the Park posited that the Comm'n disallowed testimony in regard to limitations it already considered to be part of the "zoning scheme," namely the injunctive restrictions from Adams and the camping and parking limitations from the ZBA Judgment. The third argument is that there is no legitimate land use basis under this statute, as well as no record evidence thereof, to support the amendments. In support of this argument, the Park argued that "[c]reating consistency with a court order or stipulation is not among the listed permissible reasons for land use regulation." P. Br., p. 21. As a result, the third argument also takes up the issue of the insertion of the Adams injunctive restrictions and the ZBA Judgment into the zoning regulations.

The Park also made arguments about specific provisions of the amendments. Among these are the following: (1) The limitations on days and hours of racing and race car activities violate and are preempted by General Statutes § 14-164a; (2) the amendments attempt to regulate noise in an improper fashion; and (3) the Comm'n exceeded its statutory authority under § 8-3 (c) by requiring the Park to file an application for a special permit, as well as a site plan, as a prerequisite to moving to amend the regulations. This third argument is an appeal of virtually identical provisions in Sections 221.1 and 221.3. As previously mentioned, Section 221.1 largely deals with days and hours of racing, and also deals with restrictions on mufflered and unmufflered racing. Subsection (8) of Section 221.1 a. provides that "[t]he parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan

identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection." Almost identical is subsection (d) of 221.3, which pertains to camping by spectators and participants: "The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection."

The Park also made several general arguments that applied to sections of the amendments other than the ones reviewed above. The Park argued that the amendments constitute illegal spot zoning, target a single property owner and regulate a user rather than a use. The Park further contended that the amendments do not conform to the Town's Plan of Conservation and Development.

In response, the Comm'n argued that: (1) there is a legitimate land use basis for the amendments; (2) it acted within its authority in addressing how certain standards in the regulations may be amended; (3) there is evidentiary support for the amendments in the administrative record; (4) the Park has not sustained its burden to prove that the amendments do not conform to the Town's comprehensive plan or its plan of conservation and development; (5) the amendments do not constitute spot zoning, target a single property owner, or seek to regulate a user rather than a use; (6) the amendments concerning the track's hours of operation are not preempted by or irreconcilably in conflict with General Statutes § 14-164a; (7) the amendments

concerning mufflered versus unmufflered racing do not constitute illegal noise regulations, and, in fact, the limitations on unmufflered racing are not even attempts to regulate noise; and (8) the Comm'n is acting within its statutory authority by requiring the Park to file an application for a special permit, as well as a site plan, as a prerequisite to moving to amend the regulations.

In support of the Comm'n's position, the Council contended that several of the Park's claims have been abandoned for failure to brief; the Park's prior stipulations to limits on Sunday racing and hours of operation in the injunction action act as a waiver to any current challenge to the amended regulations; the Comm'n's actions in limiting Sunday racing are not preempted by General Statutes § 14-164a; the amendments do not impermissibly regulate noise; and state law allows the Comm'n to require the Park to file for a special permit with a site plan in order to seek to amend the zoning regulations.

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DISCUSSION

A

Language of the Amendments at Issue

As set forth above, the Park has briefed or argued appeals of portions of Sections 221.1 and 221.3 of the 2015 amendments. Therefore, it is important to review the language of these two sections of the amendments. Section 221.1 provides, in relevant part, as follows:

A track for racing motor vehicles, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the issuance of a special permit in compliance with the procedures and standards of these regulations and also subject to the following:

a. No motor vehicle races shall be conducted on any such track except in accordance with the following parameters [footnote 1 is then inserted which reads as follows: FN 1. The parameters set forth herein are identical to those set forth in

the Amended stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield), which parameters were previously incorporated by reference in the zoning regulations]:

- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows: (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year. (B) Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows: (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m. (B) On Saturdays, not more than ten (10) in number each calendar year, between the hours of 9:00 a.m. and 6:00 p.m. (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays. (D) In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then said "rain date and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above. (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m. (i) In the event any of the holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited. (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes. (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmufflered activity beyond ten (10) as provided in Paragraph b) above,
- (4) Prohibited activity upon the track shall include the revving and testing of mufflered or unmufflered car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.
- (5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.

(8) The parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection.

Section 221.3 provides, in pertinent part, as follows:

Camping by spectators and participants is allowed as an accessory use to permissible automobile events subject to the following restrictions:

- a. All camping and camping vehicles shall be locations within the infield of any asphalt race track existing as of the effective date of this regulation.
- b. No motor vehicles shall be parked in any Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are (1) on official track business; and (2) parked in the parking lot existing as of the effective date of this regulation.
- c. No traffic other than emergency or service vehicles shall be allowed between the hours of 11:00 pm [sic] and 6:00 am [sic] on any accessway into any race track that abuts property located at 52 White Hollow Road.
- d. The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection.

Return of Record, Ex. 20.

В

Park's Arguments Under § 8-2

As mentioned above, the Park makes three interrelated arguments under § 8-2. The court will address one argument separately, and, then, the other two together.

(1)

Conformity to the Comprehensive Plan

The Park argued that the amendments do not comply with the mandate that the zoning regulations conform to the Town's comprehensive plan. The court disagrees.

Section 8-2 states that municipal zoning regulations "shall be made in accordance with a comprehensive plan. . . . "A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties." (Internal quotation marks omitted.) Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 220 Conn. 551. "In the absence of a formally adopted comprehensive plan, a Town's comprehensive plan is to be found in the scheme of the zoning regulations themselves." (Internal quotation marks omitted.) Id.

In its brief, the Park contended that "[a]Ithough the scheme of zoning allows race tracks as a permitted use, the Amendments seek to limit the operation of a race track to such an extent that the use will be severely hampered." Pl. Br., p. 22 (#127). In support of this proposition, the Park argued that the prohibition on Sunday racing, regulation of days and hours of racing and limits on unmufflered racing would put the Track at a severe competitive disadvantage with other national race tracks, and, thus, the Amendments are not in conformity with the comprehensive plan.

There are two fatal flaws with this position. First, this position proceeds on an incorrect premise concerning the zoning status of the Park prior to the regulations at issue. As previously discussed, the use of the Site for car racing has not been a permitted use under the zoning regulations for over forty years. Although the use of the Site for car racing by the Park's predecessors was a permitted use from 1959 until 1975, the Comm'n voted in 1975 to amend the

regulations to categorize this use as one requiring a special permit. After that time, the use of the Site for car racing was a specially permitted use, not a permitted use, as the Park suggests.

Second, the argument marshalled in search of this position evinces a misunderstanding of bedrock zoning principles. Preventing the Park from being placed at an economic disadvantage with its national competitors is not a goal of the Town's comprehensive plan, as reflected in its zoning regulations. A comprehensive zoning plan is a "general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties." *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 551; see also *Lewis* v. *Zoning Board of Appeals*, Superior Court, judicial district of Middlesex, Docket No. CV-96-080068-S (May 2, 1997, *Arena, J.*) (protection from competition not an interest protected by zoning laws). Therefore, based upon the arguments it made, the Park did not sustain its burden to convince the court that the amendments were generally discriminatory or out of harmony with the comprehensive plan of zoning adopted to serve the needs of the Town.

(2)

Authority under § 8-2 to Engraft Provisions from the Adams Injunction and from the ZBA Judgment into the Zoning Regulations; Legitimate Land Use Basis Under § 8-2 to Support the Engrafted Amendments

Both of these arguments pertain to the insertion of provisions from the *Adams* injunction and the ZBA Judgment into the zoning amendments. The Park contended that § 8-2 did not authorize the Comm'n to graft restrictions from the *Adams* injunction concerning days and hours of racing operation and from the ZBA Judgment pertaining to camping, parking and use of access roads onto the Town's zoning regulations. Specifically, the Park claimed that § 8-2 "does not . . . allow a Commission to simply defer to what private individuals have settled upon in

private lawsuits without any consideration whatsoever of whether such settlement terms further statutorily sanctioned purposes." Pl. Brief, p. 17 (#127). Similarly, the Park argued that amending zoning regulations to make them consistent with a previous court order or stipulation is not a permissible reason for land use regulation under § 8-2, and that no record evidence supports the amendments. The Park's two main arguments are two sides of the same coin, namely that the Comm'n acted in an ultra vires manner and without a legitimate reason when it inserted provisions from the most recent version of the *Adams* injunction and from the ZBA Judgment into the zoning regulations. The court will first review the language that was incorporated into the zoning regulations from the private actions which gave rise to the current *Adams* injunction and the ZBA Judgment.

(a)

Language Incorporated from Previous Court Orders into the Amendments
Subsection a. of Section 221.1 clearly acknowledges that its intent is to cut and paste
what it calls the "parameters" of the 1988 Adams Stipulation into the zoning regulations. Section
221.1 states that "[n]o motor vehicle races shall be conducted on any such track except in
accordance with the following parameters [footnote 1 is then inserted which reads as follows: FN

1. The parameters set forth herein are identical to those set forth in the Amended stipulation of
Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams,
et al. v. B. Franklin Vaill. . . ." The "parameters" adopted by the 2015 amendments address the
days and hours of the week in which motor vehicle racing may take place in the following
fashion. The 2015 amendments expressly prohibit all "activity of mufflered or unmufflered
racing cars" on the track or in the paddock area on all Sundays. In addition to the Sunday
prohibition, the 2015 amendments only permit "activity with mufflered racing car engines" on

weekdays, which are defined as Mondays through Fridays, from 9:00 a.m. to 10:00 p.m., but provide an exception for six days a year on which "such activity may continue beyond...10:00 p.m. without limitation." Therefore, the regulations do not allow mufflered racing on Saturdays. The 2015 amendments also place extensively detailed limitations on the days of the week on which "activity with unmufflered racing car engines" may take place. Specifically, such activity may take place on Tuesdays between 12:00 noon and 6:00 p.m., on ten Saturdays per year between 9:00 a.m. and 6:00 p.m., on the ten Fridays that precede the ten Saturdays between 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing other activities related to direct preparation for the Saturday racing. The regulations also include provisions for what happens in the event of a rain out. Unmufflered racing may also take place on Memorial Day, the Fourth of July and on Labor Day between 9:00 a.m. and 6:00 p.m. The regulations prohibit revving and testing of any car engines, mufflered or unmufflered, on Saturdays and the permitted holidays before 9:00 a.m. and after 6:00 p.m., except for the transportation of such vehicles off their trailers or back and forth from the paddock area. Such transporting must occur between 7:30 a.m. and 7:30 p.m. The regulations also prohibit loudspeaker activity before 8:00 a.m. and after 7:00 p.m. The aforementioned restrictions on racing and racing-related activity found in Section 221.1 have been engrafted from the 1988 Stipulation to the *Adams* injunction.

Section 221.3 incorporates provisions from the ZBA Judgment that (1) limit camping and camping vehicles to the Track's infield, (2) prohibit parking in the track outfield, except for cars on official business and those parked on the current parking lot, between 10:00 p.m. and 6:00 a.m., and (3) disallow traffic, except for emergency or service vehicles, between 11:00 p.m. and 6:00 a.m. on any roadway leading to the track that abuts 52 While Hollow Road.

The court shall next review the status of the regulations just prior to the adoption of the 2015 amendments to understand more clearly the changes effected by the 2015 amendments.

(b)

Changes Effected by the 2015 Amendments

As mentioned above, (1) the provisions from the ZBA Judgment were never part of the zoning amendments prior to the 2015 amendments, and (2) the only reference in the version of the zoning regulations preceding the amendments, the 2013 version, to the *Adams* stipulation posited that "[n]o races shall be conducted on any such track except during such hours as are permitted by Court Order dated 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." The court, in accordance with the opinion of the Comm'n's counsel, has found, as set forth above, this language to be ambiguous. The court has further found that the language from the 2013 amendments operated solely to regulate hours, as opposed to days of racing per the 1988 *Adams* Stipulation.

Therefore, the court finds that the 2015 amendments effect the following changes.

Unlike their predecessors, the 2015 amendments expressly prohibit Sunday racing, disallow mufflered racing on Saturdays, and limit unmufflered racing to 10 Saturdays a year and to the three warm weather holidays, Memorial Day, the Fourth of July and Labor Day. Moreover, the 2015 amendments not only restrict "races . . . on . . . [the] track," as did the 2013 regulations, but also "activity of" race cars on Sunday both in the paddock or on the track, as well as "activity with mufflered racing car engines" on the days specified above during the week. Additionally, whereas the 2013 regulations were silent as to camping and parking, the new amendments limit camping to the track infield, disallow public parking outside of the existing parking lot in the

track outfield between 10:00 p.m. and 6:00 a.m., and prohibit non-emergency traffic on any roadway leading to the Park that abuts 52 While Hollow Road.

The court will next review the formal statement of reasons provided by the Comm'n.

(c)

Formal Statement of Reasons Pertaining to the Incorporation of Provisions from Adams
Injunction and from ZBA Judgment

Near the end of the Comm'n's deliberative session on the amended regulations, its counsel presented to the Comm'n a formal statement of reasons he had drafted before the meeting. The formal set of reasons relevant to the issues before the court may be summarized, in pertinent part, as follows:

- Reason 1 posited that placing the portions of Sections 221.1 and 221.3 engrafted from the
 operative Adams injunction and from the ZBA Judgment "into the regulations themselves
 allows the affected property owners to know what the zoning restrictions are without
 having to review outside documents [the Adams judgment and modifications thereof, as
 well as the ZBA Judgment]."
- Reason 2 acknowledges that *Adams* is based on private nuisance law and that the authority of the Comm'n derives from § 8-2, but states because "zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use, it is reasonable to incorporate these restrictions on land use within the zoning regulations themselves." Reason 2 further posits that, by incorporating the relevant provisions of the *Adams* injunction and the ZBA Judgment into the zoning regulations, the Comm'n clarified "the exact standards that are the present 'status quo' and that have shaped the conduct and reasonable expectations of affected property owners for decades." By doing so, the Comm'n also eliminated the possibility of an unintended amendment of the

zoning regulations, which previously had referred to the hours of racing operation in the Adams injunction, were the Adams injunction to be modified. Reason 2 also states that "articulating the current restrictions within the regulations themselves" provides a benefit by setting forth a clear mechanism, namely, the permitting and amendment process for zoning changes, so that any interested party may, if it chooses to do so, seek to amend such restriction without the necessity of attempting to modify the injunction.

Reason 4 declares (1) that the amendments support "public health & safety and preserve property values," (2) that Section 221.1 a and the other zoning provisions regulate a use, namely a car race track, that "may have substantial impacts on surrounding properties," including "noise . . . traffic (including volume, the size of vehicles travelling on narrow streets, and congestion), nighttime illumination, air quality, and changes to property values."

(d)

Analysis of Amendments under § 8-2

As discussed above Section III of this memorandum of decision, the court must take a multi-step approach to discerning whether the Comm'n's incorporation of provisions from the *Adams* injunction and from the ZBA Judgment into its zoning regulations is an authorized and reasonable exercise of the Comm'n's police power under § 8-2, and an exercise supported by a legitimate land use basis. In regard to both sets of incorporated provisions, the court must decide whether the incorporation of these provisions was authorized under § 8-2, whether these amendments at issue constitute a proper exercise of the Comm'n's zoning police powers under § 8-2, whether these amendments are rationally related to the exercise of those police powers, and whether these amendments are arbitrary, unreasonable or illegal. Because the Park's initial

argument is that the Comm'n improperly grafted the judgment from a private nuisance case into the zoning regulations, the court will examine, first, the incorporation of the provisions from the *Adams* injunction and from the ZBA Judgment. The Park argued consistently that such "cutting and pasting" was, per se, an activity beyond the Comm'n's § 8-2 authority.

At first blush, these arguments seem to have some merit. Comments of individual Comm'n members, made prior to the formal vote in favor of the amendments, reveal that some members felt that their charge was not substantive, but, rather, that it involved nothing more than cutting and pasting. Based on the belief of some Comm'n members that they were simply codifying the existing zoning "scheme," one Comm'n member issued stern warnings at the beginning of the public hearings that the Comm'n would not hear any testimony regarding the impact of the Park on townsfolk. As mentioned above, the Comm'n's counsel evinced a belief that all provisions of the amendments before them were already incorporated by reference into the existing zoning regulations or were, at least, part of some generalized zoning "scheme" or "status quo." As a result, the Comm'n may have seen the job at hand as being merely the administrative task of spelling out each such provision in the regulations to obviate the need for an interested person to obtain a copy of the most recent injunction from the Superior Court or the Town Clerk's office to find out what was incorporated by reference into the regulations. This belief, however, was mistaken. While the 2013 regulations did incorporate the injunction's restrictions on hours of racing, those regulations did not clearly incorporate the injunction's restrictions on days of racing, or the 1979 ZBA Judgment's restrictions on camping and traffic.

Nonetheless, the partially erroneous beliefs of individual members of the Comm'n are not a sufficient basis upon which this court could sustain the Park's appeal. First, despite the Comm'n's expressed intent to limit the testimony, it, in fact, took voluminous evidence and

public commentary related to the essential issues at dispute in the present appeal, including, but not limited to, noise, traffic, and days of racing. Second, as set forth above, in a situation such as this, where the Comm'n has provided a formal statement of reasons, this court must disregard comments by Comm'n members during the public hearing, prior to the formal vote to amend, and consider only the formal statement of reasons. See *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 544.

The court finds that the incorporation of provisions from previous causes of action into zoning regulations does not, per se, constitute a violation of the authority of a zoning commission and is not otherwise, in and of itself, an arbitrary or illegal action. Rather, the court must review the provisions that were incorporated, in light of the formal statement of reasons provided by the Comm'n, in order to decide whether the actual provisions themselves sprang from the Comm'n's authority and were otherwise reasonable and legal.

In doing so, the court is aware that the private judgments from which the incorporated provisions were lifted serve a different purpose than do zoning regulations. The common thread among all of the descriptions of the zoning police power cited above is that it is intended to benefit the general welfare, the public and the community. As one commentator stated, "zoning...proceeds on the basis of benefitting the entire community. . . ." Zoning & the Law of Nuisance, 29 Fordham L. Rev. 749, 750 (1961). Zoning is "primarily intended to protect the public at large and not the interests of individuals." 83 Am. Jur. 2d, Zoning and Planning § 2 (2017). At least one Connecticut case has adopted this line of thinking in the context of individual developers. "Our case law indicates that the primary purpose of zoning is to protect the public interest. . . . [Z]oning is meant to protect the public at large and not the interests of

individual developers." (Citations omitted; emphasis in original.) Lewis v. Swan, 49 Conn. App. 669, 677-78, 716 A.2d 127 (1998).

Private nuisance cases, like *Adams*, however, proceed on an entirely different footing. "Private nuisance law . . . is concerned with conduct that interferes with an individual's private right to the use and enjoyment of his or her land. Showing the existence of a condition detrimental to the public safety . . . is often irrelevant to a private nuisance claim." *Pestey* v. *Cushman*, 259 Conn. 345, 357, 788 A.2d 496 (2002). "[I]n order to recover damages [or to be awarded injunctive relief] in a common-law private nuisance cause of action, a plaintiff must show that the defendant's conduct was the proximate cause of an unreasonable interference with the plaintiff's use and enjoyment of his or her property." Id., 361.

In sum, therefore, the analysis that a court must undertake in a private nuisance case is whether the allegedly offensive use of its real property by one landowner unreasonably interferes with the use and enjoyment of another landowner's real property. These private and personal interests stand in contrast to the public, community interests furthered by zoning regulation. Although the court is aware of these differences, the court's task at hand is to decide if § 8-2 authorizes the incorporation of the specific language from *Adams* and the ZBA Judgment into the regulations. In other words, notwithstanding the differences between the authority for private nuisance relief and that for zoning regulations, the court's job is still the same. The court must determine whether the amendments are within the police power of the Comm'n, are otherwise not arbitrary, unreasonable or capricious and are supported by any formal reasons and record evidence.

The court has set forth above a general statement of the normal police powers delegated, under § 8-2, to a local zoning commission in adopting zoning regulations. Generally, a local

zoning commission may pass regulations "to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements." (Internal quotation marks omitted.) First Hartford Realty Corp. v. Plan & Zoning Commission, supra, 165 Conn. 541 n.1, 338 A.2d 490 (1973).

Elsewhere, our Supreme Court has described the zoning police power as making decisions that further the "prosperity of the community." (Internal quotation marks omitted.) Corthouts v. Newington, supra, 140 Conn. 288. Citing Connecticut case law, Professor Tondro adds that the "present language [of § 8-2] permits zoning powers to be used" in the following relevant ways: "to regulate the location and use of structures [and land] for trade [and] industry," "to conserve the value of buildings; [and to] encourage the most appropriate use of land throughout the municipality." T. Tondro, supra, p. 53. By its very language, § 8-2 provides that a zoning body may provide regulations "to protect the public health, safety, convenience and property values." § 8-2.

For several reasons, the court concludes that the actions of the Comm'n fall within the police power articulated in § 8-2, are otherwise not arbitrary, unreasonable or capricious, and are supported by formal reasons and record evidence.

As set forth above, the Comm'n's formal statement of reasons contains clearly legitimate general land use bases for the amendments under § 8-2, to wit, that the proposed amendments support public health and safety, and preserve property values. Formal statement of reason number four states that the "proposed amendments also support public health & safety and preserve property values." Reason four also states that a car race track is the kind of use that

"may have substantial impacts on surrounding properties" including not only noise, but also traffic volume, traffic congestion, and large vehicles travelling on roads, as well as nighttime illumination, air quality and property values. Persuasive evidence was taken during the public hearing to support these reasons and to underscore the impact that the Site has on the value of surrounding properties. "If any one [reason] supports the action of the commission, the plaintiff must fail in his appeal." *Zygmont* v. *Planning & Zoning Commission*, 152 Conn. 550, 553, 210 A.2d 172 (1965). As mentioned above, § 8-2 expressly recognizes that the promotion of health and safety and the preservation of property values are two purposes of zoning regulations. "Zoning legislation has been upheld with substantial uniformity as a legitimate subject for the exercise of the police power when it has a rational relation to the public health, safety, welfare and prosperity of the community and is not in plain violation of constitutional provision, or is not such an unreasonable exercise of this power as to become arbitrary, destructive or confiscatory." (Internal quotation marks omitted.) *Builders Service Corp. Inc.* v. *Planning & Zoning Commission*, supra, 208 Conn. 283.

Moreover, other aspects of the formal statement of reasons supply additional legitimate land use bases for adopting the amendments. These bases include making the regulation of racing at the Site consistent, accessible and clear.

As set forth in great detail above, a significant amount of chaos has arisen concerning the regulation of the race track at the Site in the past sixty years. This confusion, inconsistency and imprecision has arisen from various sources, including (1) the simultaneous regulation of racing by several sometimes incompatible mechanisms, (2) sloppiness, such as accidentally failing to

²⁰ Section 8-2 (a) provides, in relevant part, that zoning regulations "shall be designed to . . . promote health and the general welfare" and that "[s]uch regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings"

include the race track on some versions of the Table of Uses and (3) laxness, such as the Comm'n's failure to require a specially permitted use, the track, to apply for a special permit.

The amendments intend to clarify and make more consistent and convenient the regulation of car racing at the Site.

Our Supreme Court has described the exercise of the police power by a zoning body as promoting the "public welfare," Wade v. Town Plan and Zoning Commission, 145 Conn. 592, 594, 145 A.2d 597 (1958), and has described "convenience" as one aspect of the promotion of the public welfare. Abel v. Planning & Zoning Commission, 297 Conn. 414, 430, 998 A.2d 1149 (2010). Moreover, at least one trial court decision held that amending zoning regulations for purposes of clarification is a valid exercise of the zoning police power. See Davko, Inc. v. New Milford Zoning Commission, Superior Court, judicial district of Litchfield, Docket No. CV-00-55157-S (April 24, 1992, Pickett, J) (commission did not act illegally, arbitrarily or in abuse of discretion by adopting an amendment to zoning regulations designed to "to clarify the uses permitted"). As mentioned above, § 8-2 explicitly states that convenience is another appropriate exercise of the zoning police power. The following statements drawn from the formal statement of reasons support the conclusion that the amendments will serve the legitimate land use goals of public welfare and convenience:

Formal statement one points out that "[s]etting forth the standards in the regulations themselves allows the affected property owners to know what the restrictions are without having to review outside documents." Formal statement two states that the amendments serve (1) to clarify the exact standards that govern the use of the Park, and (2) to eliminate the unintended consequence that could occur were a modification of the *Adams* injunction to automatically amend the zoning regulations without the requisite administrative processes. Formal statement

two also posits that articulating the existing restrictions into the regulations affords all parties a clearer mechanism by which to seek to amend zoning provisions by means of the Town's permitting and amendment processes. As discussed both in formal statement two and in the record evidence, allowing an interested party to try to effect change by following zoning regulation amendment processes saves such a party the burden and expense of seeking to amend the *Adams* injunction in court. Each of these formal statements of reasons supports a legitimate land use goal, by promoting the public welfare and promoting convenience in ascertaining how the Park is regulated. Moreover, the overwhelming impression that the court garners from the formal statement of reasons is that the adoption of the zoning regulations is an attempt to hit the "reset" button on land use regulation governing the track, an attempt to correct all the past accidents of history that have led to the multiple avenues of regulation listed, supra, and an attempt to place all parties on equal footing and to direct them to seek redress from the Town's zoning bodies pursuant to the clear guidance of their administrative processes. Once again, doing so promotes both the public welfare and convenience in unifying the applicable regulation of the Site.

Accordingly, this court finds that the foregoing articulated reasons for the 2015 amendments are valid, are reasonably supported by the record and are pertinent to the considerations the Comm'n was required to apply under the zoning regulations. See R. Fuller, 9A Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 33:2.

Therefore, the Park cannot succeed on its arguments that (1) the "cutting and pasting" of the injunction into the regulations was improper; (2) the Comm'n generally acted outside of its statutory authority; (3) no legitimate land use basis was provided, in general, for the amendments; and (4) no record evidence generally supported the amendments.

Days of Racing and Preemption under General Statutes § 14-146a

In its original decision, the court found that the restrictions placed on days of racing and racing activities violate and are preempted by General Statutes § 14-164a (a). Both the Comm'n and the Council moved the court to reconsider this conclusion. The Comm'n and/or the Council, which adopted the Comm'n's supporting brief, raise the following arguments in their motions for reconsideration: (1) The court misapplied the law of waiver to the actions of the Park's predecessors in stipulating to judgments in *Adams*; (2) the court did not adequately consider § 14-164a in light of other statutes, such as § 8-13, which permits the Comm'n to adopt more stringent standards as to days of racing than does § 14-164a; and (3) in light of the broad authority granted to a zoning commission to enact zoning regulation amendments under § 8-2, the legislature did not explicitly state that § 14-164a usurped the right of a zoning commission to adopt limitations on hours or days of operation. Section 14-164a, like the pertinent zoning regulation, is prohibitory, not permissive. The court will consider these arguments made upon reconsideration in seriatim.

(1)

The Park, Through Its Predecessors, Did Not Waive Its Rights to Challenge the Prohibition on Sunday Racing and Hours of Operation

As discussed immediately above, the Council and the Comm'n argued that the Park, through the actions of its predecessors, waived its right to oppose the amendments that prohibit Sunday racing or racing on other days of the week. The court finds no merit in this argument. In support of the waiver argument, the Council and the Comm'n first posited that the 2013 regulations already served to limit days of racing. This argument is rebutted by the plain language of the 2013 regulations that "[n]o races shall be conducted on any such track except

during such hours as are permitted by Court Order 5/12/59 and subsequent Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office." The 2013 regulations do not, on their face, limit days of racing, but only hours. Further, the 2013 regulations reveal that the Comm'n knew, at that time, how to exercise oversight over days of operation when it chose to do so. In discussing the adaptive re-use of existing buildings near the RE district, the 2013 regulations state, in pertinent part, that "the commission may impose conditions, limiting the number of employees working on the site at one time, and also limited the *days* and hours *of operation* based upon the characteristics of the use, the site, and the surrounding area."

(Emphasis added.) Town of Salisbury 2013 Zoning Regulations, § 209.6 j. Finally, as discussed, supra, counsel for the Comm'n opined to the Comm'n, during its deliberative session, that the hours of use provision in the 2013 regulations was ambiguous. The court agrees with counsel's opinion. Thus, the 2013 regulations limited hours, but not days, of racing.

This court finds equally unpersuasive the Council's argument, made both initially and upon reconsideration, that the Park waived its right to contest the Sunday racing zoning amendments because it, or its predecessors, agreed, as part of previous stipulations to the injunction order, to limitations on Sunday racing. In its motion for reconsideration, the Council argued that the court misapprehended the law in several ways. The Council contended that the court failed to recognize that the injunction bound the Park because it was *in rem* and ran with the land. The Council also argued that the stipulated judgments entered into by the Park's predecessors were contracts that, by necessary inference, were immutable. More specifically, the Council argued that the "1966, 1968 and 1988 stipulations in *Adams v. Vaill* (Appendix to LRCC's Brief at A29-40) are clearly 'stipulations,' not judgments after trial; they clearly constitute the *acceptance* by Lime Rock's predecessors of the ban on Sunday racing and the

limits on racing hours."²¹ (Emphasis in original.) (# 169). In fact, counsel for the Council argued, at reconsideration, that because the Park's predecessors entered into such stipulated judgments, the Park was precluded from seeking a modification of them.²² For the reasons set forth below, the court disagrees.

The court begins by examining the familiar formulation of waiver law in Connecticut. "[W]aiver is [t]he voluntary relinquishment or abandonment—express or implied—of a legal right" (Internal quotation marks omitted.) *Delahunty v. Targonski*, 158 Conn. App. 741, 748, 121 A.3d 727 (2015). Putting aside, for the moment, the very real issue of whether the Park's predecessors could have voluntarily relinquished or abandoned a legal right of their successors, the Park, the court makes the following findings and conclusions.

First, the court's original memorandum of decision never took the position that the injunction does not bind the Park under the holding of cases like *Commissioner of Environmental Protection* v. *Farricielli*, 307 Conn. 787, 805-15, 59 A.3d 789 (1990). In fact, the final paragraph of the original memorandum of decision contained the following sentence: "The court must remind all of the parties, however, that both the *Adams* injunction and the stipulated ZBA Judgment remain in full force and effect." This amended memorandum of decision ends with a similar admonition.

Second, the court understands and appreciates that a stipulated judgment is both a contract and a judgment under the authority of cases such as *Solomon* v. *Keiser*, 22 Conn. App. 424, 426-27, 577 A.2d 1103 (1990) (a stipulated judgment is defined as a contract of the parties

²¹ One problem with this argument is that the 1968 modification to the *Adams* injunction was, as discussed above, not the result of a stipulation, but of litigation activity by the plaintiffs.

²² The Council also raised waiver issues concerning the requirement of a special permit to seek the future amendment of zoning regulations. Based upon the court's treatment of this issue upon reconsideration, discussed infra, there is no need for the court to discuss this argument.

acknowledged in court and ordered to be recorded by a court as its judgment). However, the stipulated judgments in Adams are contracts only between the parties thereto. In this regard, it is noteworthy that the composition of the parties, both plaintiffs and defendants, in Adams has changed over time. An unsuccessful 1965 motion to modify the original injunction was filed solely by The Lime Rock Corporation, not by the defendant Vaill. Along these same lines, only about one-half of the original Adams plaintiffs moved to modify the 1966 Stipulation in 1968. While the 1966 stipulation involved the Park's predecessors and the original Adams plaintiffs, the parties to the most recent stipulation, the 1988 stipulation, included a later predecessor to the Park, named Lime Rock Associates, Inc., and an entity apparently substituted in for the original plaintiffs in Adams, the Lime Rock Protection Committee, Inc. As mentioned above, the parties did not provide evidence of the names of the constituents, incorporators, shareholders, officers and/or the directors of the Lime Rock Protection Committee, Inc. at the time of the 1988 Stipulation. In fact, the only officer of the Lime Rock Protection Committee that the court can identify is Joan C. Bergdahl, its president and the person who executed the 1988 Stipulation on behalf of the Lime Rock Protection Committee. Joan C. Bergdahl was not an original Adams plaintiff, although the court infers that she was a descendant or successor in title to one of the Bergdahls who were original plaintiffs. In any event, neither stipulation is a contract between the Park's predecessor and all citizens of the Town. More to the point, the Council failed to articulate a persuasive reason why the court should find that a stipulation in a private nuisance lawsuit to modify the relief awarded therein to a limited number of plaintiffs would or should operate to preclude a party from objecting to town-wide zoning amendments proposed by the Comm'n under claim of statutory authority.

Third, and most importantly, our Supreme Court has already ruled that a stipulation in Adams may be modified. As noted in footnote 21 of this amended memorandum of decision, and as recognized in a previous brief by the Council, the modification of the injunction in 1968 did not occur by means of a stipulation. As previously discussed in detail, slightly less than one-half of the original Adams plaintiffs filed, on July 29, 1968, a motion to modify the 1966 stipulation of the permanent injunction to which they had entered with the Park's predecessor. These Adams plaintiffs argued that, based on a statutory amendment, the court must modify the 1966 stipulation to prohibit, at all times, the racing of unmufflered vehicles at the Park. Adams v. Vaill, supra, 158 Conn., 482. The upshot of this case was that the trial judge, Wall, J., issued an order on August 26, 1968 modifying the injunction by "prohibit[ing] the operation and use of unmufflered motor vehicles on the Lime Rock race track." Adams v. Vaill, supra, Superior Court, Docket No. CV-58-0015459-S; see Adams v. Vaill, supra, 482. When the case went up on appeal, our Supreme Court held that, "courts have inherent power to change or modify their own injunctions where circumstances or pertinent law have so changed as to make it equitable to do so." Adams v. Vaill, supra, 483. Therefore, our Supreme Court has already held that a stipulation modifying the original Adams injunction may itself be modified by motion, and has set forth standards under which such a stipulation may be modified, e.g., "where circumstances or pertinent law has so changed to make it equitable to do so." Id. To argue that some of the original Adams plaintiffs had the right to modify the injunction, but that the Park does not have the very same right, is misguided, at best.

For all of these reasons, the court does not find that either of the two *Adams* stipulations, including the most recent stipulation entered into in 1988, evidence, in any way, a waiver of the

Park's right to oppose the 2015 zoning amendments pertaining to Sunday racing, noise limitations and hours of operation.

(2)

Section 8-13 Does Not Authorize the Town to Regulate Car Racing More Strictly than §14-164a

As set forth above, the Comm'n and the Council contended that the court did not decide an issue previously raised by them, namely that § 8-13 would allow the Comm'n to regulate car racing more strictly than § 14-164a. Although the court agrees that it did not specifically address this issue, the court disagrees with the argument made by the Comm'n and the Council.

The Comm'n and the Council asserted that the court erred in finding that General Statutes § 14-164a preempts the zoning regulations restriction of times of races because § 8-13 explicitly allows zoning regulations to adopt stricter standards than statutes. Section 8-13 reads, in its entirety, as follows: "If the regulations made under authority of the provisions of this chapter require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required in any other statute, bylaw, ordinance or regulation, the provisions of the regulations made under the provisions of this chapter shall govern. If the provisions of any other statute, bylaw, ordinance or regulation require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required by the regulations made under authority of the provisions of this chapter, the provisions of such statute, bylaw, ordinance or regulation shall govern."

The Comm'n and the Council claimed that the amendments' preclusion of Sunday racing and their limitation of racing on other days constitutes the Comm'n's imposition of "other and

higher standards" than are required under § 14-164a, and that, therefore, § 8-13 allows the zoning amendments to trump the application of § 14-164a. The only case that the Comm'n and the Council brought to the court's attention was VIP of Berlin, LLC v. Berlin, 50 Conn. Supp. 542, 951 A.2d 714 (2007), aff'd, 287 Conn. 142, 946 A.2d 1246 (2008), wherein the court held, inter alia, that there is not an irreconcilable conflict between § 8-2 (a), authorizing towns to regulate the location and use of buildings, and § 7-148 (c) (7) (A) (ii), authorizing towns to regulate the mode of using any buildings. The gravamen of the declaratory judgment action was to determine whether the town's locational restrictions regarding sexually oriented business were enforceable. It was undisputed that that adult store was within 250 feet of a residential zone, in violation of the town's restrictions. In addressing the interplay between §§ 8-2 (a) and 7-148, the court noted that the overlapping authority was anticipated in § 8-13 ("if the provisions of any other statute, bylaw, ordinance or regulation . . . impose other and higher standards than are required by the regulations made under authority of the provisions of this chapter, the provisions of such statute, ordinance, or regulation shall govern"). Id., 556. The court explained: "Thus, the legislature stated that other laws, including municipal ordinances, may overlap with and provide other and higher standards in an area dealt with by zoning regulation." Id. This court cannot, based on VIP, summarily find that any irreconcilability between the zoning regulations at issue in the present case and General Statues § 14-164a is unshackled by operation of § 8-13.

Our Supreme Court has already decided that the predecessor to § 8-13 used the word "standards" to refer to physical standards. In *Mallory* v. *West Hartford*, 138 Conn. 497, 86 A.2d 668 (1952), our Supreme Court addressed whether the town followed the proper procedures for a zone change. The plaintiffs argued that the provisions of General Statutes § 838 controlled over certain special laws because section 838 imposed higher standards. Id., 498-500. The plaintiffs

relied on 1925 special act, 19 Special Laws 393, § 20, which is identical to General Statutes § 8-13. Id. Our Supreme Court rejected the plaintiff's reliance on the 1925 special act, finding that "[t]he requirements of § 838 under discussion are procedural. The higher standards referred to in § 20 are concerned with size of yards, number of stories and the like. Section 838 imposes no higher standards of this type." Id., 500.

Inherent in our Supreme Court's conclusion is its application of the maxims of noscitur a sociis ("it is known from its associates") and ejusdem generis ("of the same kind or class"). "Typically, when a statute sets forth a list or group of related terms, we usually construe them together. . . . This principle - referred to as 'noscitur a sociis' - acknowledges that the meaning of a particular word or phrase in a statute is ascertained by reference to those words or phrases with which it is associated. . . . As a result, broader terms, when used together with more narrow terms, may have a more restricted meaning than if they stand alone." (Citations omitted; internal quotation marks omitted.) Dattco, Inc. v. Commissioner of Transportation, 324 Conn. 39, 48, 151 A.3d 823 (2016). Likewise, ejusdem generis is "[a] cannon of construction that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed." Black's Law Dictionary p. 556. "The principle of ejusdem generis applies when (1) the [clause] contains an enumeration by specific words; (2) the members of the enumeration suggest a specific class; (3) the class is not exhausted by the enumeration; (4) a general reference [supplements] the enumeration . . . and (5) there is [no] clearly manifested intent that the general term be given a broader meaning than the doctrine requires." (Internal quotation marks omitted.) 24 Leggett St. Ltd. Partnership v. Beacon Industries, 239 Conn. 284, 297, 685 A.2d 305 (1996). "Thus, the doctrine of ejusdem generis calls for more than . . . an abstract exercise in semantics and formal logic. It rests on particular

insights about everyday language usage. When people list a number of particulars and add a general reference like 'and so forth' they mean to include by use of the general reference not everything else but only others of like kind. The problem is to determine what unmentioned particulars are sufficiently like those mentioned to be made subject to the [clause's] provisions by force of general reference." (Internal quotation marks omitted.) Id.

Under these two doctrines of statutory interpretation, the phrase "other and higher standards" cannot be read in a vacuum; rather, it must be read in context. This phrase is found within the following dependent clause, "If the provisions of any other statute, bylaw, ordinance or regulation require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards " Each standard employed before "other and higher standards" is a standard of physical measurement. Section 8-13 contemplates overlapping regulation of physically measurable concepts, such as "width or size of yards, courts or other open spaces," "height of building," "number of stories" and "percentage of lot area to be left unoccupied " The statute does not contemplate overlapping regulation of concepts such as days of operation. Interpreting "standard" broadly to refer to any statutorily-authorized regulation would render superfluous the foregoing terms because those items would already be encompassed within the broad meaning of "standard." See, e.g., Dattco, Inc. v. Commissioner of Transportation, supra, 324 Conn. 49 (rejecting interpretation of "facilities" to broadly refer to anything because it would render superfluous the terms "land," "buildings," and "equipment" in statute).

This conclusion is buttressed by the commonly accepted meaning of the word "standard." General Statutes § 8-13 does not define "standard." Therefore, this court interprets the term

according to its common meaning; General Statutes § 1-1 (a); and looks to the dictionary to glean that meaning. Dattco, Inc. v. Commissioner of Transportation, supra, 324 Conn. 46.

Webster's sets forth several distinct meanings for the word "standards," one of which is relevant to the statute at issue: "[S]omething set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality." It is the position of the Comm'n and the Council that this definition is broad enough to include the amendments' regulation of days and times of racing. Days and times of racing, however, are not standards, in that they are not "something set up and established by authority as a rule for the measure of quantity, weight, extent, value or quality."

Thus, the maxims of noscitur a sociis and ejusdem generis provide assistance in interpreting § 8-13, as they did in interpreting its statutory precursor in *Mallory*. See *Historic District Commission* v. *Hall*, 282 Conn. 672, 684, 923 A.2d 726 (2007) (to ascertain legislative intent, the court cannot limit itself to examining words or sentences in isolation; "the whole statute must be considered"); *State* v. *Roque*, 190 Conn. 143, 152, 460 A.2d 26 (1983) ("[a]ssistance in ascertaining the legislative intent is afforded by resort to the familiar maxim of noscitur a sociis"). This conclusion is buttressed by the common understanding of the word "standards' set forth above. Therefore, § 8-13 has no applicability to the present case, as the zoning regulations at issue impose no higher standards of the type referred to in that statute.

(3)

Section 14-164a (a) Preempts the Regulations' Restriction on Sunday Racing, but not the Restriction on Racing Other Days of the Week

As discussed at great length, the Park's substantive argument, with which the Comm'n and the Council disagree, is that the prohibition on Sunday racing, set forth in section 221.1 of the 2015 amendments is either preempted by, or violates, General Statutes §14-164a. Our

Supreme Court has provided extensive guidance on the law of preemption. "The State may regulate any business or the use of any property in the interest of the public welfare or the public convenience, provided it is done reasonably." (Internal quotation marks omitted.) Modern Cigarette, Inc. v. Orange, 256 Conn. 105, 118, 774 A.2d 969 (2001). "[I]n determining whether a local ordinance is preempted by a state statute, [the court] must consider whether the legislature has demonstrated an intent to occupy the entire field of regulation on the matter 23 or whether the local ordinance irreconcilably conflicts with the statute." ²⁴Id., 119. "Whether the legislature has undertaken to occupy exclusively a given field of legislation is to be determined in every case upon an analysis of the statute, and the facts and circumstances upon which it intended to operate." (Internal quotation marks omitted.) Bencivenga v. Milford, 183 Conn. 168, 176, 438 A.2d 1174 (1981). "Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives." Modern Cigarette, Inc. v. Orange, supra. "Therefore, [t]hat a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through the enactment of an ordinance, so long as there is no conflict with the state legislation." Id. "Whether a conflict exists depends on whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes." Id., 120.

To decide whether the amendments are preempted by or violate General Statutes § 14-164a, the court must review the language of each.

Section 221.1 provides, in relevant part, as follows:

²⁴ This concept is often called "conflict preemption."

²³ This concept is commonly referred to as "field preemption."

A track for racing motor vehicles, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the issuance of a special permit in compliance with the procedures and standards of these regulations and also subject to the following:

- (a) No motor vehicle races shall be conducted on any such track except in accordance with the following parameters [footnote 1 is then inserted which reads as follows: FN 1. The parameters set forth herein are identical to those set forth in the Amended stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield), which parameters were previously incorporated by reference in the zoning regulations]:
- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows: (A) On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year. (B) Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows: (A) On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m. (B) On Saturdays, not more than ten (10) in number each calendar year, between the hours of 9:00 a.m. and 6:00 p.m. (C) On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays. (D) In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then said "rain date and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above. (E) On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m. (i) In the event any of the holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited. (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes. (iii) In no event shall any such holidays increase the number of

Saturdays of permissible unmufflered activity beyond ten (10) as provided in Paragraph b) above.

The foregoing 2015 amendments address the days of the week on which motor vehicle racing may take place as follows. The 2015 amendments clearly prohibit all racing on Sunday. In addition to the Sunday prohibition, the 2015 amendments also prohibit mufflered racing on Saturdays in the following way. The amendments state that "[n]o motor vehicle races shall be conducted on any track except in accordance with the following parameters . . . " and then proceed to state that activity with mufflered car engines shall be permitted "on any weekday." Weekdays include Mondays through Fridays. Therefore, no mufflered race activity may take place on Saturdays. The 2015 amendments also place extensive limitations on the days of the week on which unmufflered racing can take place. Significantly, unmufflered racing may only take place, for example, on ten Saturdays per calendar year. Because mufflered racing is only permitted on weekdays, and not, therefore, on Saturdays and because unmufflered racing may only take place on ten Saturdays in one year, the regulations operate to limit car racing to ten Saturdays per year.

The court now moves to review the language of General Statutes §14-164a. The parties sharply disagree on the meaning of this statute. Accordingly, this court begins its preemption analysis by gleaning the meaning of General Statutes § 14-164a through the familiar process of statutory interpretation.

"The process of statutory interpretation involves a reasoned search for the intention of the legislature In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case." (Internal quotation marks omitted.) Cox Cable Advisory Council v. Dept. of Public Utility Control, 259 Conn. 56, 63, 788 A.2d 29, cert. denied, 537 U.S. 819, 123 S. Ct. 95, 154 L. Ed. 2d 25 (2002). In seeking to determine that

meaning, General Statutes § 1-2z directs us to first consider the words of the statute. State v. Heredia, 310 Conn. 742, 756, 81 A.3d 1163 (2013). "We seek the intent of the legislature not in what it meant to say, but in what it did say." (Internal quotation marks omitted.) Sanzone v. Board of Police Commissioners, 219 Conn. 179, 187, 592 A.2d 912 (1991). "[T]he actual intent, as a state of mind, of the members of a legislative body is immaterial, even if it were ascertainable." (Internal quotation marks omitted.) Id.

"If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) State v. Heredia, supra, 310 Conn. 756. "When a statute is not plain and unambiguous, we also look for interpretative guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) Id.

In accordance with General Statutes § 1-2z, this court begins its analysis with the text of General Statutes § 14-164a (a): "No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section. Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or Town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances." Mindful of the axiom that no sentence in a statute can be read in isolation, *Lackman v. McAnulty*, 324 Conn.

277, 287, 151 A.3d 1271 (2016), a careful examination of the three individual sentences in the context of the other sentences found in this portion of subsection (a) will help the court unlock the meaning of subsection (a).

The first sentence states that "[n]o person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section."

The second sentence provides that "[s]uch race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday." The statute does not define the word "such," but, in accordance with General Statutes § 1-1 (a), this court looks to "the common understanding expressed in dictionaries in order to afford the term its ordinary meaning." Lackman v. McAnulty, supra, 324 Conn. 287. "The word 'such' has been construed as an adjective referring back to and identifying something previously spoken of; the word naturally, by grammatical usage, refers to the last antecedent." (Internal quotation marks omitted.) Id. "The accepted dictionary definitions of 'such' include 'having a quality already or just specified,' 'previously characterized or specified,' and 'aforementioned.'" (Internal quotation marks omitted.) Id. Mindful of the dictionary definition, and when read contextually and in accordance with applicable grammatical rules, "such race or exhibition" refers the reader back to the kinds of "race" and "exhibition" described in the preceding sentence. Quite clearly then, "such race or exhibition" in the second sentence refers to "any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition," as stated in the first sentence. Further, the word "may" has several functions, and in the context of the second sentence, the word "may" denotes a grant of statutory authority. See Black's Law Dictionary (8th Ed. 2004) p. 1000 (defining "may" as "[t]o be permitted to"). Harmonizing the first and second

sentences, it is permissible to conduct a race, or any contest or demonstration of speed or skill with a motor vehicle at any reasonable hour of any week day or after twelve o'clock noon on any Sunday.

The third sentence provides that "[t]he legislative body of the city, borough or Town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances." The construction of this third sentence requires this court to seek guidance from traditional rules of English grammar. See, e.g., Indian Spring Land Co. v. Inland Wetlands & Watercourses Agency, 322 Conn. 1, 14-16, 145 A.3d 851 (2016). Sentence three consists of two clauses: an independent clause ("[t]he legislative body of the city, borough or Town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday") that, were it not for the second clause, could stand alone as a complete thought, and a subordinate, adverb clause ("provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances") that is dependent upon the main clause for its meaning and thus cannot stand by itself. See B. Garner, The Red Book: A Manual on Legal Style (2d Ed. 2006) § 10.48, pp. 179-80. The relationship between the two clauses is shown by the subordinating conjunction "provided" and signals that the subordinate, adverb clause places a condition on the operation of the independent clause. See Black's Law Dictionary, supra, p. 1261 (defining "provided" as a conjunction meaning "[o]n the condition or understanding;" or "[e]xcept").

Thus, application of the normal rules of English grammar dictates the following construction: a local legislative body has the authority to issue a permit allowing a race or exhibition to be held prior to 12 p.m. on Sunday, but this authority is limited by the condition

that "such race or exhibition" cannot be held in violation of any local ordinance. Finally, careful interpretation leads this court to conclude that the adjective "such" in the subordinate clause of sentence three refers the reader back to its immediate antecedent, the "race or exhibition" that may be held before noon on Sunday referred to in the independent clause of the third sentence. Lackman, supra.

Consequently, by its plain language, General Statutes § 14-164a (a) allows a race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition to be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. It further allows a local legislative body to issue a permit authorizing a race or exhibition to be held prior to 12 p.m. on Sunday. However, that grant of authority to the local legislative body is limited by the condition that a race or exhibition can only be conducted prior to 12 p.m. on Sunday if it does not violate any local ordinance.

Contrary to the Comm'n's argument, there is no reasonable construction of General Statutes § 14-164a (a) that results in the subordinate, adverb clause in the third sentence ("provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances") placing a condition on the operation of the second sentence ("Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday"). The plain language of a statute can be revealed by the legislature's choice of sentence structure and use of punctuation. See, e.g., *Indian Spring Land Co. v. Inland Wetlands & Watercourses Agency*, supra, 322 Conn. 14-16; see also *Lieb v. Dept. of Health Services*, 14 Conn. App. 552, 559, 542 A.2d 741 (1988) ("courts must presume that the legislature incorporated the purpose of the statute in every sentence, clause, phrase and item of punctuation of the statute"). Indeed, the plain meaning of a statute "will typically heed the

commands of its punctuation." (Internal quotation marks omitted.) Indian Spring Land Co. v. Inland Wetlands & Watercourses Agency, supra, 14.

Here, the drafters clearly created two sentences, separated by a period for punctuation. By use of a period, each sentence contains an independent, complete thought. The grammar, syntax and punctuation of subsection (a) compel the conclusion that the drafters did not intend for sentence three's subordinate clause to be carried past its intended destination, i.e., the independent clause that comes before the subordinate clause in the third sentence, so as to modify or limit anything in the second sentence. By use of the end punctuation, the period, the legislature created a distinction between the statutory authorization to conduct races and exhibitions at reasonable times, and the power of local legislative bodies to regulate Sunday racing prior to noon. If the legislature had intended to vest local legislative bodies with the power to regulate all days and times of racing, it would have drafted the statute differently. See Windels v. Environmental Protection Commission, 284 Conn. 268, 299, 933 A.2d 256 (2007) (legislature knows how to convey its intent expressly); see, e.g., Indian Spring Land Co. v. Inland Wetlands & Watercourses Agency, supra, 322 Conn. 16 (legislature could have used comma to separate terms if it intended a different result). This court is constrained to read the statute as written, and, as dictated by its punctuation, structure and grammar, General Statutes § 14-164a (a) does not allow a local legislative body to limit the days and times of racing, other than to allow racing before noon on Sunday on the condition that such earlier racing time complies with local ordinances.

This conclusion is buttressed by the evolution of General Statutes § 14-164a over time, and by the legislative history of the language at issue in this case. Originally enacted in 1935 as General Statutes § 898c, the statute did not address days or times of racing but provided only that

"[n]o person shall operate a motor vehicle in any race or speed contest, open to the public and to which an admission fee is charged, unless the commissioner of state police shall have issued a certificate approving such race or contest."

In 1939, the legislature amended the statute to provide, in more specific detail, that any person desiring to manage, operate or conduct a race or exhibition was required to make an application in writing to the commissioner of state police, setting forth in detail, inter alia, the time of the proposed race or exhibition. See Public Acts 1939, No. 23. The 1939 revision also provided the commissioner of state police with the authority to "issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances." Public Acts 1939, No. 23.

The clause, "which may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday," is non-restrictive, as evidenced by both the introductory term "which" and its separation from the beginning and end of the sentence by commas. See W. Strunk Jr. & E.B. White, The Elements of Style (3d Ed. 1979), pp. 3-5. As it is non-restrictive, the clause provides a supplemental, non-essential description of the commissioner's authority to issue a permit naming a definite date for a race or exhibition, and could be removed without changing the basic meaning of the subject-predicate combination. See W. Strunk Jr. & E.B. White, supra, pp. 3-5 (non-restrictive clauses do not limit or define, but

²⁵ Indeed, that the words "and it" can be substituted for "which" confirms that the clause is nonrestrictive – the commissioner of state police . . . may issue a permit naming a definite date for such race or exhibition <u>and it</u> may be conducted at any reasonable hour on any week day or after the hour of two o'clock in the afternoon of any Sunday. See generally *Commonwealth* v. *Kenehan*, 12 Pa. D. & C. 585, 593 (Pa. Ct. Common Pleas 1929) (clause is nonrestrictive if "and it" or "and their" can be substituted for the relative pronoun).

merely expand upon the meaning of the words to which they relate); B. Garner, The Redbook: A Manual on Legal Style, supra, §§ 1.6, 10.20, pp. 6, 156-58; see also *United States* v. *Indoor Cultivation Equipment*, 55 F.3d 1311, 1315 (7th Cir. 1995) ("Congress's use of the pronoun 'which' is significant; it introduces a nonrestrictive clause . . . that does not limit the meaning of the word it modifies").

The next clause – "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances" – functions solely as a dependent, adverb clause modifying the independent clause ("may issue a permit naming a definite date for such race or exhibition"). Specifically, its purpose is to modify the verb "may issue" by limiting the commissioner's authority to issue a permit for a race or exhibition. See B. Garner, The Redbook: A Manual on Legal Style, supra, § 10.39, p. 173-74 (adverbs modify verbs to explain more about the action); see generally *Wellington Underwriting Agencies*, *Ltd.* v. *Houston Exploration Co.*, 267 S.W.3d 277, 288 (Tex. App. 2008), aff'd, 352 S.W.3d 462 (Tex. 2011) (interpreting dependent, adverb clause).

By this analysis, the 1939 statute vested the commissioner of state police with the authority to issue a permit allowing races or exhibitions at reasonable times and days, but he could not issue a permit allowing a race or exhibition on a day or at a time that was contrary to any local ordinances. In other words, in 1939, the time and date of a race or exhibition could be limited by local ordinances.

Amendments in 1998, however, significantly altered both the substance and meaning of the statute. To demonstrate how the statute was altered, the legislature placed brackets around the omitted content while capitalizing added content:

The Commissioner of Motor Vehicles . . . may issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour

of any week day or after twelve o'clock noon on any Sunday. [, provided] THE COMMISSIONER, WITH THE APPROVAL OF THE LEGISLATIVE BODY OF THE CITY, BOROUGH OR TOWN IN WHICH THE RACE OR EXHIBITION WILL BE HELD, MAY ISSUE A PERMIT ALLOWING A START TIME PRIOR TO TWELVE O'CLOCK NOON²⁶ ON ANY SUNDAY, PROVIDED no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances.

Public Acts 1998, No. 98-102, p. 787.

This court cannot discount the drafters' placement of a period after "Sunday," thereby liberating the authority of the commissioner to issue a permit allowing races or exhibitions at any reasonable hour of any week day or after twelve o'clock noon on any Sunday, and giving it grammatical independence. Possibly of even more significance was making the phrase, "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances," dependent upon a newly created main clause ("the commissioner, with the approval of the legislative body of the city, borough or Town in which the race or exhibition will be held, may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday") for its meaning. By these modifications, it is impossible for the sentence, "[t]he commissioner of motor vehicles . . . may issue a permit naming a definite date for such race or exhibition, which may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday," to be modified by the clause, "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or Town ordinances."

"When the legislature amends the language of a statute, it is presumed that it intended to change the meaning of the statute and to accomplish some purpose." *State* v. *Johnson*, 227 Conn. 534, 543, 630 A2d 1059 (1993); cf. *Bassett* v. *City Bank & Trust Co.*, 115 Conn. 393, 400-01, 161 A.852 (1932) (legislature may modify phrase of statute to simplify or condense the statutory

²⁶ By revisions in 1975, "two o'clock in the afternoon of any Sunday" was changed to "twelve o'clock noon on any Sunday." Public Acts 1975, No. 75-404, pp. 398-99.

language and not effect a substantive change). As it relates to General Statutes § 14-164a (a), to infer that the amendments were not intended to change the meaning of the statute would be to treat the inclusion of the new language as mere surplusage, a construction of the statute that clearly should be avoided, Segal v. Segal, 264 Conn. 498, 507, 823 A.2d 1208 (2003), and to ignore the change in punctuation. See People ex rel Krulish v. Fornes, 175 N.Y. 114, 121, 67 N.E. 216 (1903) (O'Brien, J., concurring) ("[p]unctuation is what gives virility, point and meaning to all written composition... A change in punctuation is frequently as material and 's significant as a change in words" (citation omitted)).

The materiality of the revisions is a significant indication that it was the intent of the legislature to substantively change the meaning of General Statutes § 14-164a (a) from its prior 1939 version. The alterations in phraseology and change in punctuation cannot be attributed to a desire to condense or simplify the law, or to improve the phraseology, nor can the alterations be construed to reflect nothing more than corrections of inaccurate or superfluous punctuation. See Bassett v. City Bank & Trust Co., supra, 115 Conn 400-01; 82 C.J.S. § 332 (2009). The foregoing revisions are more than grammatical sleights of hand, but reflect a significant change in the meaning of the provision.

Returning now to the question of preemption, it is apparent that the legislature intended local authorities to have some input regarding, inter alia, reasonable hours of racing on week days and start times for Sunday racing. As such, the legislature has not demonstrated an intent to occupy the entire field of regulation on hours of racing to the exclusion of local regulations. See, e.g., *Parillo Food Group, Inc.* v. *Board of Zoning Appeals*, 169 Conn. App. 598, 151 A.3d 864 (2016) (legislature did not intend to occupy the entire field of regulation under liquor control act, but intended municipalities and local zoning board to have some input regarding the location of

establishments that sell alcohol and conditions relating to the operation of those businesses). The doctrine of "field preemption" does not, therefore, apply to this case.

Conflict preemption however, does apply in this case insofar as Sunday racing is concerned. "A test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes; if so, there is a conflict." *Bauer v. Waste Management of Connecticut, Inc.*, 234 Conn. 221, 235, 662 A.2d 1179 (1995). As General Statutes § 14-164a (a) is now drafted, ²⁷ it clearly and simply permits Sunday racing after noon by stating that a motor vehicle "race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday." Section 221.1a, however, flatly prohibits Sunday racing. While the legislature's use of the phrase "at any reasonable hour of any week day" indicates a local body may regulate the hours of racing on weekdays, the statutory statement that racing "may be conducted after noon on any Sunday" expressly authorizes and permits car racing after noon on Sundays. Section 221.1a flatly prohibits Sunday racing. Therefore, there is a conflict under the holding of *Bauer*.

In their motions for reconsideration, the Comm'n and the Council attempt to avoid this conclusion by asking the court to hold that both §14-164a (a) and Section 221.1.a (1) are prohibitions. In support of this argument, the Comm'n and the Council draw the court's attention to other portions of § 14-164a which are indeed prohibitions. The first sentence of § 14-164a (a), for example, states that "[n]o person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance

²⁷ In 2004, the legislature revised the statute to its current wording, which no longer includes permitting responsibilities for the commissioner of motor vehicles. See Public Acts 2004, No. 04-199, pp. 714-15. However, in all other relevant respects, the revisions of 1998 remained intact.

with the provisions of this section." Other portions of § 14-164a are prohibitions as well. By way of example, the statute disallows motor races on ice, and motor cross racing by minors under the age of thirteen. The court is not persuaded. When it compares the one simple clause in § 14-164a (a) that permits car racing "after twelve o'clock noon on any Sunday" to 221.1a's flat prohibition on Sunday racing of any kind, the court reaches the inescapable conclusion that the regulations forbid what the statute permits, namely racing after noon on Sunday.

The Council raised another interesting argument. During oral argument, the Council's attorney, a very experienced and extremely capable land use lawyer, opined, in so many words, that conflict preemption was essentially dead in cases such as this. Bauer, however, is at odds with this characterization. Citing longstanding precedent, Bauer states clearly that one frequent test employed in determining whether conflict preemption exists is "whether the ordinance...prohibits that which the statute authorizes..." and concludes that "if so, there is a conflict." Bauer, supra, 235. Because the Supreme Court in Bauer plainly articulated a "prohibit versus permit" test to determine conflict preemption, the court concludes that the Council's attorney was, perhaps, commentating that our Supreme Court has recently construed regulatory language so as not to find conflict preemption. For example, in Bauer, the Supreme Court held that a Department of Environmental Protection permit authorizing a landfill to build a 190 foot high wall was prohibitory, as were the zoning regulations at issue, because the Supreme Court understood "the permit to allow the landfill to go no higher than 190 feet..." Bauer, supra, 235-36 (emphasis in original). Additionally, in Modern Cigarette v. Town of Orange, 256 Conn. 105, 774 A.2d 969 (2001), the Supreme Court, after citing the "prohibit versus permit" test, id., 130, held that both a state statute limiting the placement of cigarette vending machines

to areas that only adults could access and a town ordinance banning cigarette vending machines within the town limits entirely were prohibitory in nature. Id., 129-32.

Unlike the Council's attorney, however, the court does not have the luxury to provide sideline analysis on possible Connecticut Supreme Court interpretation trends. Instead, the court must apply the precedents of cases like *Bauer* and *Modern Cigarette* to the language found in the relevant documents before it. In doing so, the court recognizes that the Supreme Court has not jettisoned the "prohibit versus permit" test. To the contrary, both *Bauer* and *Modern Cigarette* reiterate that the court is to find conflict preemption when "the ordinance...prohibits that which the statue authorizes." *Modern Cigarette*, supra, 120. In this case, the zoning regulations clearly prohibit car racing on Sundays and the state statute clearly authorizes car racing "after twelve o'clock noon on any Sunday." §14-164a(a), Gen. Stat.

As a result, and for the reasons articulated above, § 14-164a(a) preempts the Sunday racing prohibition found in Section 221.1a.

Accordingly, the court sustains the Park's appeal as to that portion of section 221.1.a of the amendments to the zoning regulations which provides that "[a]ll activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays" because this portion of the regulations prohibits that which the legislature permits, namely, car racing after noon on Sundays. However, the court denies the Park's appeal as to preemption of other restrictions on days and hours of racing.

E

Regulation of Unmufflered Racing

The 2015 amended regulations place more strict limitations on unmufflered racing, as compared to mufflered racing. Unmufflered racing is permitted only on Tuesdays, and on ten

Saturdays and Fridays a year. In contrast, mufflered racing is allowed on any weekday between 9:00 a.m. and 10:00 p.m. ²⁸ The Park contends that these limitations on unmufflered racing are an illegal and unauthorized attempt to regulate noise because the Comm'n did not comply with the prerequisites set forth in *Berlin Batting Cages v. Planning & Zoning Commission*, 76 Conn. App. 199, 821 A.2d 269 (2003) before passing those specific amendments. The Comm'n and the Council disagree, contending that (1) the separate prohibitions and limitations on unmufflered racing are regulations of use and not noise; (2) even assuming that these restrictions are noise regulations, they are authorized; and (3) *Berlin Batting Cages* does not govern the outcome. Accordingly, this court must decide (1) whether the restrictions on unmufflered racing constitute regulation of noise; if so, then (2) whether the Comm'n has the authority to regulate noise; and, if so, then (3) whether the Comm'n was required to comply with *Berlin Batting Cages*.

The court turns first to the language of the regulations. As the regulations do not contain a definition of "muffler," "mufflered racing" or "unmufflered racing," the court refers to dictionary definitions to determine the commonly approved usage of the language in question. See Schwartz v. Planning & Zoning Commission, 208 Conn. 146, 153, 543 A.2d 1339 (1988) ("words employed in zoning ordinances are to be interpreted in accord with their natural and usual meaning"); 9A R. Fuller, supra, § 34.6 (land use regulations passed by an agency rather than by the legislative body of a municipality are equivalent to an ordinance). A muffler is "a device to deaden noise; especially: one forming part of the exhaust system of an automotive vehicle." Merriam-Webster's Collegiate Dictionary (10th Ed. 1997). Accordingly, by definition, mufflers exist to deaden noise. The only rational distinction between mufflered and unmufflered racing is the amount of noise generated. See Spero v. Zoning Board of Appeals, 217 Conn. 435,

²⁸ The restrictions on unmufflered racing are found in Section 221.1.a of the amendments.

441, 586 A.2d 590 (1991) ("[c]ommon sense must be used in construing the regulation, and we assume that a rational and reasonable result was intended by the local legislative body").

The position taken by the Comm'n and the Council, that regulation of unmufflered engines is not a regulation of noise, casts a blind eye on the overwhelming amount of record evidence demonstrating that those who supported the 2015 amendments associated unmufflered racing with intolerable noise. The position taken by the Comm'n and the Council also ignores the lengthy history of the regulation of unmufflered racing at the Site. Given this lengthy history, it cannot be argued that the 2015 amendments were written on a blank slate. Rather, for almost sixty years, beginning with the 1959 injunction, unmufflered racing has been associated with the creation of intolerable noise. Indeed, in issuing the 1959 injunction, the court clearly distinguished mufflered from unmufflered racing, and strictly limited the operation of such unmufflered engines at the Site after finding that noise from unmufflered engines especially created a nuisance.

In an attempt to counter the almost tautological quality of these facts and conclusions, the Comm'n advanced what, at first blush, appears to be a logical sounding argument as to why the regulation of unmufflered racing is not the regulation of noise. According to the Comm'n, unmufflered racing is more strictly regulated because it is more popular than mufflered racing, and, therefore, attracts more fans who, in turn, create more traffic and more air and light pollution. Although the court first expressed a belief that there was no such evidence in the administrative record, the Comm'n, upon reargument, pointed to several places in the administrative record that would seem to constitute evidence that unmufflered racing attracts more fans. (#168, pp. 20-21, nn.12 and 13). Assuming, without deciding, that these examples from the administrative record reflect evidence of greater traffic and other impacts arising from

unmufflered racing, the Comm'n's recently confected argument remains unpersuasive for the following reason. As set forth above, when a zoning commission posits a formal statement of reasons, the court must refer solely to that document to ascertain the commission's deliberative process. "The principle that a court should confine its review to the reasons given by a zoning agency... applies where the agency has rendered a formal, official, collective statement of reasons for its action." Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission, supra, 220 Conn. 544.

Paragraph four of the Comm'n's formal statement of reasons, which is the only reason that pertains to noise and other aspects of public health and safety, does not distinguish between mufflered and unmufflered racing. In fact, it states that "a track for racing motor vehicles . . . by its very nature, may have substantial impacts on surrounding properties . . . [including] not only noise, but traffic . . . nighttime illumination, air quality, and changes to property values."

(Emphasis added.) Having found that an automobile race track has an intrinsically negative impact on traffic, as well as other aspects of public health and safety, the Comm'n cannot, at a later time, persuasively argue that it limited unmufflered racing more than mufflered racing because unmufflered racing has greater negative impacts on public health and safety.

For the foregoing reasons, the court finds that the regulation of unmufflered racing is the regulation of noise. The court also finds that the Comm'n has the general authority to regulate noise. See Cambodian Buddhist Society v. Planning & Zoning Commission, 285 Conn. 381, 440, 941 A.2d 868 (2008) (zoning commission could reasonably have concluded that 148-car parking lot would be a significant source of noise); Husti v. Zuckerman Property Enterprises, Ltd., 199 Conn. 575, 582, 508 A.2d 735, appeal dismissed, 479 U.S. 802, 107 S. Ct. 43, 93 L. Ed. 2d 6 (1986) (citing § 8-2 and noting that noise is one of dangers that zoning is meant to combat);

Hayes Family Limited Partnership v. Plan & Zoning Commission, 115 Conn. App. 655, 662, 974 A.2d 61, cert. denied, 293 Conn. 919, 979 A.2d 489 (2009) (noise was a relevant consideration when evaluating special permit application to construct a pharmacy).

The court must now decide whether the Comm'n's general authority to regulate noise is limited by the holding of *Berlin Batting Cages*. In that case, the court held, inter alia, that a zoning regulation purporting to control noise was invalid because it conflicted with state statutes governing noise pollution control. *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, supra, 76 Conn. App. 215-219: General Statutes § 22a-67 et seq. governs noise pollution control, and mandates that any municipal noise pollution control enactment must be approved by the commissioner of environmental protection. The municipal regulation at issue in *Berlin Batting Cages*, § X (D) (3), was located within a chapter of regulations entitled "Environmental and Related Regulations," and provided that "[a]ny noise emitted outside the property from which it originates shall comply" with certain noise pollution control provisions of the State's Department of Environmental Protection. Id., 215. By its terms, that municipal regulation "purported to adopt the noise control regulations promulgated by the commissioner," and, thus, the court held that § X (D) (3) was a noise control ordinance as contemplated by General Statutes § 22a-67 et seq. Id., 217-18. However, Berlin ordinance § X (D) (3) had not been approved by the commissioner. Id., 217.

The Appellate Court rejected the Town's argument that such approval was unnecessary because General Statutes § 8-2 authorized it to regulate noise. Id., 218. The court explained that the authority granted to zoning commissions under § 8-2, to promote health and the general welfare, does not "necessarily confer" the authority to promulgate regulations concerning noise pollution and, even if it did, § 8-2 certainly could not trump the legislature's specific enactment

in § 22a-67 et seq. Id. Indeed, the court noted that § 8-2 does not even "mention noise or noise pollution." Id. The court also rejected the Town's argument that the regulation did not purport to comprehensively regulate noise emissions because its requirements only applied to site plan reviews. Id., 217-18.

At first blush, it may seem difficult to reconcile Berlin Batting Cages with the line of cases cited above that stand for the proposition that § 8-2 gives a zoning body the authority to regulate noise. Read broadly and very liberally, Berlin Batting Cages might be construed to require a zoning commission to seek the approval of the state environmental commissioner before promulgating any zoning regulation even remotely related to noise. The broad dicta of Berlin Batting Cages, namely that § 8-2 does not even mention "noise or noise pollution," id., 218, seems to conflict with prior and subsequent appellate authority, including Cambodian Buddhist Society v. Planning & Zoning Commission, supra, 285 Conn. 381, Husti v. Zuckerman Property Enterprises, Ltd., supra, 199 Conn. 575, and Hayes Family Limited Partnership v. Plan & Zoning Commission, supra, 115 Conn. App. 655, all of which stand, either expressly or by necessary implication, for the proposition that zoning commissions may regulate noise under the authority of § 8-2. Husti, in particular, is at odds with Berlin Batting Cages. In Husti, supra, 581-82, our Supreme Court rejected state and federal constitutional challenges to zoning regulations that limited outdoor concerts in a residential neighborhood. In so holding, the Supreme Court cited "noise" as falling within the "kinds of dangers that zoning is meant to combat; see General Statutes §8-2 " Id., 582.

In attempting to reconcile the foregoing appellate authority with the holding of *Berlin Batting Cages*, this court is mindful of the bedrock principle that "[a]s a procedural matter, it is well established that [our Appellate Court], as an intermediate appellate tribunal, is not at liberty

Furthermore, it is axiomatic that one panel of [the Appellate Court] cannot overrule the precedent established by a previous panel's holding." (Citation omitted; internal quotation marks omitted.) St. Joseph's High School, Inc. v. Planning & Zoning Commission, 176 Conn. App. 570, 595, 170 A.3d.73 (2017). Any assumption by this court that Berlin Batting Cages intended to overrule Supreme Court precedent recognizing that § 8-2 authorizes zoning bodies to generally regulate noise would contravene those fundamental principles of judicial restraint. Similarly, this court will also not assume that the Appellate and Supreme Court cases issued after Berlin Batting Cages were meant to overrule it sub silentio. Rather, in light of appellate authority standing for the proposition that § 8-2 authorizes a zoning commission generally to regulate noise, this court concludes that the holding of Berlin Batting Cages should be interpreted narrowly and should be limited to its facts. An argument set forth by the Park in its motion for reconsideration actually confirms and provides additional support for this conclusion: That the court, in its initial review of Berlin Batting Cages, overlooked important language in § 22a-73 (c).

To understand subsection (c) of this statute, we must first begin by examining other parts of the statute. Section 22a-73 is entitled "Municipal noise regulation programs; ordinances subject to commissioner's approval." Subsection (a) reveals that the subject of this statute is noise pollution. It provides, in pertinent part, that "it is the public policy of the state to encourage municipal participation by means of regulation of activities causing *noise pollution* within the territorial limits of the various municipalities. To that end, any municipality may develop and establish a comprehensive program of noise regulation. Such program may include a study of the noise problems resulting from uses and activities within its jurisdiction and its development and

adoption of a noise control ordinance." (Emphasis added.) The court reads this section as providing that, to regulate activities causing noise pollution, a town may develop a comprehensive program of noise regulation, which may include both a study of various noise problems and the adoption of a "noise control ordinance." Subsection (b) of § 22a-73 further describes, by means of examples, a "noise control ordinance." Such an ordinance may include a limitation of noise levels in specified zones or other areas; designation of a noise control officer or board; implementation procedures for such programs; procedures for insuring compliance with state and federal noise regulations and restrictions on noise levels applicable to construction. According to subsection (c), no such ordinance "shall be effective until such ordinance has been approved by the commissioner [of DEEP]."

Two things become clear upon review of this language. One is that the proposed regulation in *Berlin Batting Cages* was a noise control ordinance governed by the mandatory approval provisions of § 22a-73 (c). The other is that the zoning regulation in the present case, providing for differential treatment of mufflered and unmufflered racing, is clearly not such a noise control ordinance.

There were two overriding factors that resulted in the finding in *Berlin Batting Cages* that § X (D) (3) was a noise pollution control ordinance subject to approval pursuant to General Statutes § 22a-67 et seq. First, § X (D) (3) was located within the regulatory chapter regarding "Environmental and Related Regulations," and second, by its very terms, i.e., that it "purported to adopt the noise control regulations promulgated by the commissioner," it placed itself within the category of a noise control regulation. *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, supra, 76 Conn. App. 215-219. Therefore, § X (D) (3) defined itself as a noise control regulation and, by doing so, placed itself within the requirements of § 22a-73. By placing

its regulations so clearly within the bounds of the comprehensive state statutory scheme regulating noise pollution, the Town of Berlin insured that the noise control regulations it adopted would be ineffective without the prior approval of the commissioner of environmental protection. This is not the case with the Comm'n's distinction between mufflered and unmufflered racing. The zoning amendments that restrict unmufflered racing to certain days and hours do not come close to falling within any of the examples set forth in subsection (b) and do not constitute regulatory attempts to curb noise pollution under subsection (a). Further, these regulations do not comprise "a comprehensive program of noise regulation." See General Statutes § 22a-73 (a).

The Park further argued, however, upon reconsideration, that the court should consider a different portion of § 22a-73 (c), i.e., that "[n]otwithstanding the provisions of this subsection, any municipality may adopt more stringent noise standards than those adopted by the commissioner, provided such standards are approved by the commissioner," because it was considered by the *Berlin Batting Cages* court along with subsections (a), (b) and another portion of subsection (c). *Berlin Batting Cages, Inc.* v. *Planning & Zoning Commission*, supra, 76 Conn. App. 215-217. The court finds that this portion of § 22a-73 (c), as construed by *Berlin Batting Cages*, did not compel the Comm'n to seek the approval of the Commissioner of DEEP before adopting of the regulations governing unmufflered racing. As § 22a-73 does not define "standards," this court interprets the term according to its common meaning; General Statutes § 1-1 (a); and looks to the dictionary to glean that meaning. *Dattco, Inc.* v. *Commissioner of Transportation*, supra, 324 Conn. 46. As previously noted, the relevant Webster dictionary definition for the word "standard" provides that it is "something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality."

Using this definition, a difference in decibel levels, e.g., five decibels versus ten decibels would be a "standard." Distinctions between days and hours on which mufflered and unmufflered racing may take place do not constitute rules for the measure of quantity, weight, extent, value or quality. Both the legislative history of § 22a-67, et seq. and the regulations arising from it support this conclusion. The legislative history of the Noise Control Act reveals that the Act "does not attempt to address itself to motor vehicle noise... or noise from certain exempted activities such as ... state or local licensed sporting activities." P.A. 74-328. There is no dispute that the vehicles raced on the Track meet the definition of "motor vehicle" set forth in General Statutes § 14-1 (54) and that the noise regulated by the zoning amendments arises from "local licensed sporting activities." Therefore, the noise generated by these vehicles would not be subject to regulation under § 22a-67, et seq. Reflective of this legislative intent are the regulations enacted to effectuate and enforce the Noise Control Act. Specifically, the regulations arising from the Noise Control Act exclude "[s]ound created by any mobile source of noise ... [including] automobiles" Regs., Conn. State Agencies, § 22a-69-1.7 (i).

In sum, the court finds that the 2015 amendments limiting unmufflered racing do not constitute regulation of noise pollution in a manner similar to the regulation of noise pollution found in *Berlin Batting Cages*, and therefore, do not require the preapproval of the Commissioner of DEEP under the Noise Control Act. Rather, the amendments at issue in this case, which restrict noise from car engines arising from entertainment events, i.e., a motor vehicle race, are much more similar to the limitations at issue in *Husti* that restricted noise, under § 8-2, from entertainment events, namely, outdoor concerts in a residential neighborhood. Here, as the Comm'n properly invoked its general authority to regulate noise, conferred by § 8-2, the court concludes that the unmufflered racing regulations are not ineffective for want of the pre-

approval of the commissioner of environmental protection. The Park's appeal as to the regulation of unmufflered racing is denied, and the regulations concerning the same are upheld.

F

Special Permit to Seek Zoning Amendments

The Park argued that the Comm'n exceeded its statutory authority under § 8-3 (c) by requiring that the Park apply for and obtain a special permit as a precondition to attempt to amend sections 221.1 and 221.3 of the new zoning regulations. As previously noted, section 221.1.a regulates racing, including days and hours of racing operation and places restrictions on unmufflered racing. Subsection (8) of 221.1 a. provides that "[t]he parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection." Virtually identical is subsection (d) of 221.3, which pertains to camping by spectators and participants: "The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection."

In contrast to these regulations, General-Statutes § 8-3 (c) only requires an applicant requesting a change in zoning regulations to file a written petition requesting such, in a form

prescribed by a zoning commission; it does not authorize a zoning commission to require a petitioner seeking an amendment to apply for and receive a special permit before seeking the change. Counsel for the Comm'n candidly admitted that there is no other provision in the Salisbury zoning regulations requiring a person or entity who seeks a zoning amendment to apply for and receive a special permit. Nevertheless, in an attempt to counter the Park's argument, the Comm'n made several arguments, both originally and upon reconsideration by the court.²⁹

The Comm'n's first argument is a claim that §§ 221.1.a (8) and 221.3.d are merely precatory. The portion of these sections that indicate that the Comm'n may amend the regulations in question, namely Sections 221.1 and 221.3, is indeed, precatory because they do not compel, coerce or require the Park to seek amendments of 221.1 or 221.3. See Citizens Against Overhead Power Line Construction v. Connecticut Siting Council, 139 Conn. App. 565, 579, 57 A.3d 765 (2012), aff'd, 311 Conn. 259, 86 A.3d 463 (2014) ("the word 'may' denotes permissive behavior"). However, there is nothing "permissive" about what the Park must do to secure an amendment. If it chooses, in the future, to attempt to change either the "parameters" of section 221.1 or the "standards" of section 221.3, the Park must file, and have approved by the Comm'n; (1) a special permit application that is in compliance with all requirements of these regulations (including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the property); (2) the proposed amendments; and (3) a petition to amend the zoning regulations setting forth alternative parameters or standards. Nothing in the existing language of section 221.1.a (8) or section 221.3.d indicates that these requirements are anything but directory. The requirement to file a

²⁹ The Citizens Council joined the Comm'n's arguments for reconsidering this portion of the court's original decision.

special permit application with a site plan, as well as proposed amendments and a petition to amend the regulations is, therefore, clearly mandatory.

The Comm'n's argument upon reconsideration is that the court did not address the legal arguments set forth in the supplemental briefing filed by the Comm'n after the August 30, 2017 argument of this appeal. The court granted reconsideration on this issue. After due consideration of the points made in the supplemental briefing, as well as an issue of fact that the court previously overlooked in considering this issue, namely that the Park has never filed for a special permit in the forty-three years in which it was supposed to have done so, the court now denies the Park's appeal of the requirement to file a special permit application, together with a site plan, proposed amendments and a petition to amend the regulations, in order to secure amendment of §§221.1 and 221.3 of the zoning regulations.

The court originally found in favor of the Park on this issue for two reasons. First, as mentioned above, § 8-3 (c) only requires an applicant requesting a change in zoning regulations to file a written petition requesting such, in a form prescribed by a zoning commission. The court originally found that requiring an entity seeking to amend zoning regulations to file, in addition to the prescribed form, a special permit application and a site plan when placing a proposed zoning amendment before the Comm'n, was clearly outside the statutory authority laid out in § 8-3 (c). The court initially found this to be especially true were the Park to seek a minor amendment, such as an amendment allowing activity with mufflered cars on the track until 10:05 p.m. instead of 10:00 p.m. Previously, the court found that the foregoing requirements were clearly outside of the statutory authority and, therefore, the court originally sustained the appeal insofar as it pertained to amendment procedures set forth in sections 221.1.a (8) and 221.3.d. Second, the court also originally found that the proposed amendment process to be unreasonable

given that the Park is a preexisting, nonconforming use. The court earlier found that while there is no doubt that a municipality may regulate a preexisting nonconforming use under its police power, see *Taylor* v. *Zoning Board of Appeals*, 65 Conn. App. 687, 697-98, 783 A.2d 526 (2001) (requiring a landowner to obtain a permit for a quarry was a reasonable regulation of a preexisting nonconforming use under the Town's police powers), a municipality may not do so if the regulation "abrogates such a right [to the preexisting, nonconforming use] in an unreasonable manner, or in a manner not related to the public interest" (Internal quotation marks omitted.) Id., 698.

The court now finds, however, that, given the peculiar history of regulation of racing at the Site, the requirement that the Park file an application for a special permit with a site Plan when seeking a zoning amendment as to §§ 221.1 and 221.3 should be upheld. To understand this issue, the court will review the legal implications of that aspect of the Park's operations that is preexisting and nonconforming.

(1)

Legal Aspects of Park's Nonconforming Use

As mentioned above, racing at the Site took place before the Town enacted zoning regulations in June, 1959. The manner in which the track operated before this time is, therefore, a preexisting, nonconforming use. Although a nonconforming use may be intensified, it may not be allowed to increase or expand. See *Bauer v. Waste Management*, supra, 234 Conn. 243. Although the original zoning regulations listed the operation of the Site as a permitted, as of right use, and the 1975 zoning regulations amended the use to be a specially permitted use, neither

regulation can abnegate the categorization of the use that predated zoning regulations as a nonconforming use.

"Section 8-2 protects the right of a user to continue the same use of the property as it existed before the date of the adoption of the zoning regulations..." Id., 240. (Citations omitted; emphasis in original; internal quotation marks omitted.) "Such a use is permitted because its existence predates the adoption of the zoning regulations." Id. (Emphasis in original; internal quotation marks omitted.) "Where a nonconformity exists, it is a vested right which adheres to the land itself. And the right is not forfeited by a purchaser who takes with knowledge of the regulations which are inconsistent with the existing use." (Internal quotation marks omitted.) Taylor v. Zoning Board of Appeals, supra, 65 Conn. App. 694. "The sale of the property will not destroy the right to continue in the nonconforming use." Id., 695. Such "a vested right, unless abandoned, to continue the nonconforming use is in the land.... The right to a nonconforming use is a property right and... any provision of a statute or ordinance which takes away that right in an unreasonable manner or in a manner not grounded on the public welfare is invalid." (Emphasis in original; internal quotation marks omitted.) Id., 694. With such a nonconforming use, the landowner has the right to continue the nonconforming use already established. See id.

This right to continue the original, nonconforming use, however, may be regulated.

Taylor involved a situation in which the Town of Wallingford enacted zoning regulations making a nonconforming sand and gravel quarry a permitted use in its zoning district subject to a special permit. Id, 689. When the quarry operation failed to apply for the special permit, the Town issued a cease and desist order. Id., 688-89. The Appellate Court held that the municipality had the right to impose the special permit requirement upon the preexisting nonconforming use.

Id., 697-98. "Regulation of a nonconforming use does not, in itself, abrogate the property owner's right to his nonconforming use.... A Town is not prevented from regulating the operation of a nonconforming use under its police powers. Uses which have been established as nonconforming uses are not exempt from all regulation merely by virtue of that status." (Internal quotation marks omitted.) Id., 698. Further, the Appellate Court held that "the town has the right to regulate the plaintiffs' nonconforming use under its police powers," although any such regulation "must have a reasonable relation to the public health, safety and welfare and must operate in a manner which is not arbitrary, destructive or confiscatory." (Internal quotation marks omitted.) Id., 697. In deciding whether the regulation is reasonable, the court must decide, "first, that the interests of the public . . . require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals." (Internal quotation marks omitted.) Id., 697-98.

Under this line of cases, in regard to so much of the Park's operation that preexisted zoning regulation, therefore, the court must determine (1) whether public interest mandates the requirement that the Park file a special permit with a site plan when seeking a change to §§221.1, regarding racing and 221.3, regarding parking and camping, and (2) that the proposed mechanism is reasonably necessary and not unduly oppressive. In doing so, the court must bear in mind that only the "parameters" of 221.1.a, pertaining to hours, days, and noise quality of racing, and the "standards" of 221.3, concerning parking and camping, would be subject to the foregoing amendment process.

³⁰ The parties did not focus on the issue of whether the Park's use has legally intensified or illegally expanded since its pre-zoning operation. The court does not feel it necessary to decide this issue, but will instead consider the legal standards that pertain to whatever operation at the track pre-existed the June, 1959 regulations.

The court first finds that the public interest calls for the imposition of the requirement of the special permit with site plan in the event that the Park seeks to amend the regulations as to racing, camping and parking. As set forth in great detail above, the regulation of racing, camping and parking at the track has been ambiguous, jumbled, sloppy and confusing prior to the 2015. zoning amendments. During the deliberation session on the amendments at issue, the Comm'n's chair pointed out that, even though the Park has been a specially permitted use since 1975, the Park has never applied for or received a special permit. Even though it would be legally impossible for the injunction, which resulted from a private nuisance action, to inform, in any manner, the zoning regulations, the Comm'n's chair stated, that under the status quo that constituted what he elsewhere termed a vague "zoning scheme," the injunction's restrictions supplied the special permit's conditions. The injunction does not and cannot legally do so, and it would certainly inure to the public's benefit for the Park, if it desires a change in racing or camping regulations, to file, clearly and publically, an application for a special permit along with the application for the zoning amendments. Moreover, as the Comm'n's counsel pointed out during the argument on the motions for reconsideration, neither the Park nor its predecessor has ever filed a site plan of any kind. 31 It would provide a necessary benefit to the public to have a site plan of the Park on file in the zoning office, detailing important aspects of its operation like sanitation and parking. Moreover, when considering the important issues of the regulation of racing, camping and parking, it would be necessary for any member of the public to be able to understand the proposed amendments in the context of the Park's site plan and its specially permitted use

³¹ Counsel for the Comm'n pointed out in the Comm'n's deliberative session that "It's always good for a commercial operations [sic]... to have an existing site plan, special permit on the books so that everybody knows what is and isn't done." Return of Record, Exhibit 23, 13-14.

The court also finds that requiring the Park to file a special permit application and a site plan in conjunction with a zoning amendment application is reasonably necessary and is not unduly oppressive. As mentioned above, the requirement to file a special permit is long overdue. After forty-three years, it is no longer acceptable to allow the Park to operate as a specially permitted use that has neither applied for nor received a special permit. Requiring the special permit application with a site plan as a precondition for seeking a zoning amendment is reasonably necessary so that the Comm'n may, as stated above, hit the "reset button" on the regulation of the Park, bringing all of the regulation of activity at the Park into one publically accessible home, one with clear administrative due process. To require the Park to do so is not unduly oppressive. After sixty years of operation without ever having filed a site plan and forty-three years of operation without ever having filed for a special permit, it would not be unduly oppressive to require the Park to file for a special permit with a site plan if it were to seek more flexible racing hours or changes to camping or parking.

Therefore, the court finds that the requirement of filing a special permit application with a site plan in order to seek an amendment of § 221.1 or § 221.3 is a reasonable exercise of the Town's police powers over that portion of the Park that is nonconforming.

(2

Section 8-3 Does Not Preclude the Special Permit/Site Plan Requirement

Similarly, § 8-3 does not preclude the requirement that the Park file an application for a special permit with a site plan before seeking to amend zoning regulations § 221.1 or § 221.3. As mentioned above, § 8-3(c) only requires an applicant requesting a change in zoning regulations to file a written petition requesting such, in a form prescribed by a zoning commission. The Comm'n persuasively argued that the mandated special permit application with a site plan fit

within this authority, as the format in which the zoning commission wished these amendments to be presented. This conclusion is buttressed by a case submitted by the Comm'n after the August 30, 2017 argument, Zimnoch v. Planning & Zoning Commission, 302 Conn. 535, 29 A.3d 898 (2011). Although the Park argued for a narrower construction, Zimnoch clearly stands for the proposition that nothing precludes a Town from combing a zone change application with a special permit application. Id., 552. As a result, there is no bar to the Comm'n imposing a requirement under § 8-3 that an application for a zoning amendment to the critical issues of regulation of racing ,camping and parking be accompanied by a special permit application and a site plan. This is especially given the recitation of the history of regulation at the Site posited above.

For all of the reasons cited in this section, the court denies the Park's appeal of the zoning amendments mandating that any application for a zoning amendment to §§ 221.1 and 221.3 include an application for a special permit and a site plan.

The court will next proceed to consider the Park's contentions that the zoning amendments constituted spot zoning or the regulation of a user, not a use.

G

Spot Zoning and Regulation of User, Not Use

The court finds no merit in the Park's more generalized arguments that the amendments constitute illegal spot zoning or that the Park was singled out for unfair treatment. Spot zoning is "the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood. . . . Two elements must be satisfied before spot zoning can be said to exist. First, the zone change must concern a small area of land. Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community

as a whole. . . . The vice of spot zoning lies in the fact that it singles out for special treatment a lot or a small area in a way that does not further such a [comprehensive] plan." (Internal quotation marks omitted.) *Gaida* v. *Planning & Zoning Commission*, 108 Conn. App. 19, 32, 947 A.2d 361, cert. denied, 289 Conn. 922, 958 A.2d 150 (defendant's petition for cert.), 289 Conn. 923, 958 A.2d 151 (plaintiffs' cross-petition for cert.) (2008); see *Delaney* v. *Zoning Board of Appeals*, 134 Conn. 240, 245, 56 A.2d 647 (1947) ("spot zoning,' . . . if permitted, must often involve unfair and unreasonable discrimination and necessarily defeat, in large measure, the beneficial results of zoning regulation"). "Spot zoning is impermissible in this state." (Internal quotation marks omitted.) *Gaida* v. *Planning & Zoning Commission*, supra. "The obvious purpose of the requirement of uniformity in the regulations is to assure property owners that there shall be no improper discrimination, all owners of the same class and in the same district being treated alike." (Internal quotation marks omitted.) Id., 33.

The Park argued that these amendments constitute spot zoning because the RE District is too small to contain more than one track and that, as a result, the amendments affect only the Park's property. However, although the amendments do impact only one property, the court finds that the amendments do consider the use of the Site as a race track within the context of the Comm'n's "general plan for the community as a whole." Maltbie, "The Legal Background of Zoning," 22 Conn. B.J. 2, 5 (1948). One example of this is that, as early as August 3, 1958, the Salisbury Town development plan (the 1958 Plan) considered the proper use of the Site within the context of the Town as a whole. The 1958 Plan first recognized that the area around the Site was "not likely to be developed solely or wholly for residence, because of its value for business and industry as a large flat area on gravelly soil." Salisbury's zoning regulations that were developed after that time have always regulated the Rural Enterprise District with this insight in

mind; the newest amendments are both consistent with this insight and also with previous zoning regulations.

Therefore, the Park did not sustain its burden to convince the court that the amendments constituted the reclassification of a small area of land so as to disturb the tenor of the surrounding neighborhood. See *Gaida* v. *Planning & Zoning Commission*, supra, 108 Conn.

App. 32. The Park similarly did not sustain its burden to prove that the Park had been singled out for unfair treatment. The amendments do not regulate a user; they regulate the use of the Site as a motor vehicle race track. The amendments generally consider the impact of the Site within the context of zoning of the community as a whole. For these reasons, the court finds that the Park did not sustain its burden to prove that the regulations as a whole constituted spot zoning or were, in any general way, discriminatory.

Η

Conformity with the Town's Plan of Conservation and Development

The Park argued that the amendments were not in conformance with the Town's Plan of
Conservation and Development. However, the Comm'n heard record evidence adduced from
Martin J. Connor, AICP, to the contrary. The Comm'n found this evidence to be credible and
persuasive and the court cannot substitute its judgment for that of the Comm'n in regard to this
issue. See *Stiles* v. *Town Council*, supra, 159 Conn. 218-19. Therefore, the amendments are in
conformity with the Town's Plan of Conservation and Development.

1

Severability

The Council asked the court, during its motion for reconsideration, to address the issue of severability, since the court sustained the Park's appeal in part and denied it in part. Although the Council did not raise this issue at any time prior to the court's initial memorandum of decision, it would be plain error for the court to avoid this analysis. In *Hartford Federal Savings & Loan Assn.* v. *Tucker*, 181 Conn. 607, 609, 436 A.2d 1259 (1980), the Supreme Court held that was plain error for a court to overlook a clearly applicable statute. In this case, General Statutes § 1-3, applies to the zoning regulations at issue in the present case. See *Duplin v. Shiels, Inc.*, 165 Conn. 396, 398-99, 334 A.2d 896 (1973) ("[a] local ordinance is a municipal legislative enactment and for purposes of appeal is to be treated as though it were a statute. . . . The same canons of construction are applicable whether an ordinance or an act of the General Assembly is involved" (citation omitted)); see, e.g., *Ghent v. Planning Commission*, Superior Court, judicial district of Waterbury, Docket No. CV-92-0106968 (November 12, 1992, *Parker, J.*).

Therefore, the court will engage in a severability analysis.

As discussed in footnote 13 of this memorandum of decision, the amendments originally included section 221.6, a clause that provided that, if one portion of the regulations were found by a court to be invalid, all of the other provisions would be invalid as well. The Comm'n repealed this provision at a meeting on March 30, 2016. An examination of the transcript of that hearing (Exhibit 34 of the Return of Record) reveals that the Comm'n clearly desired that, even if an appeal were sustained as to some of the amendments, the Comm'n wanted the other amendments to remain in full force and effect. One member, in fact commented that the Comm'n did not want "to lose all the other things we did and achieved for the use in the RE zone based on the all or nothing." For this reason, the court finds that the amendments are severable and that those for which this appeal was denied will remain in full force and effect.

CONCLUSION

The court sustains the Park's appeal as to (1) the provisions of the amendments prohibiting Sunday racing after noon in contravention of the permission granted in General Statutes § 14-164a (a). The court denies all other aspects of the Park's appeal. Therefore, the court finds in favor of the Comm'n in regard to all other aspects of the zoning amendments.

The court must remind all of the parties, however, that both the *Adams* injunction and the stipulated ZBA Judgment remain in full force and effect. This decision has no impact on the pending motion to motion to modify the *Adams* injunction, which awaits a hearing date and a decision. The legal standards for modifying an existing injunction in a private nuisance action are different from those used when a court reviews zoning amendments. Compare *Adams* v. *Vaill*, supra, 158 Conn. 485 ("courts have inherent power to change or modify their own injunctions where circumstances or pertinent law have so changed as to make it equitable to so do") with *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.* v. *Planning & Zoning Commission*, supra, 220 Conn. 543-44 ("[c]ourts will not interfere with . . . local legislative decisions unless the action is clearly contrary to law or in abuse of discretion").

SO ORDERED.

The Hon. John D. Moore

STATE OF CONNECTICUT

NO. LLI-CV15-6013033-S

SUPERIOR COURT

LIME ROCK PARK, LLC

JUDICIAL DISTRICT OF

497 Lime Rock Road

LITCHFIELD

Lakeville (Town of Salisbury), CT 06038,

as Plaintiff,

VS.

AT TORRINGTON

PLANNING AND ZONING
COMMISSION OF THE TOWN
OF SALISBURY
Town Hall
27 Main Street
Salisbury, CT 06068
as Defendant.

and

LIME ROCK CITIZENS COUNCIL, LLC: c/o Peter Wolf 45 White Hollow Rd. Lakeville, CT 06039.

as Intervening Defendant

July 17, 2018

Present: Honorable John D. Moore, Judge

JUDGMENT FILE

This action by writ and complaint came to this court on December 8, 2015, when the plaintiff Lime Rock Park, LLC filed its complaint asking the court to sustain plaintiff's appeal from the decision of the defendant Planning and Zoning Commission of the Town of Salisbury enacting certain amendments to the Salisbury Zoning Regulations (the "Modified Amendments"), that the Court declare the Modified Amendments to be illegal and without effect, and that the court grant such other relief as the court deems

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proper; thence to later dates when the defendant Planning and Zoning Commission of the Town of Salisbury appeared on December 23, 2015; and thence to January 19, 2016, when Lime Rock Citizens Council, LLC moved to intervene, to February 2, 2016, when the plaintiff Lime Rock Park, LLC objected to the motion to intervene, and to May 16, 2016, when the court granted the motion to intervene; thence to August 12, 2016, when the intervening defendant Lime Rock Citizens Council, LLC filed its answer; thence to August 15, 2016, when the defendant Planning and Zoning Commission of the Town of Salisbury filed its certified list of papers in the record, and the defendant Planning and Zoning Commission of the Town of Salisbury filed an answer; and thence to August 24, 2016, when the intervening defendant Lime Rock Citizens Council, LLC filed its amended answer; thence to September 15, 2016, when the plaintiff Lime Rock Park, LLC filed its brief in support of its appeal complaint; thence to October 19, 2016. when the defendant Planning and Zoning Commission of the Town of Salisbury and intervening defendant Lime Rock Citizens Council, LLC filed their briefs in opposition; and thence to October 28, 2016 when plaintiff Lime Rock Park, LLC filed a motion for permission to file a reply brief in excess of ten pages, which motion was not opposed by the defendant or intervening defendant; and thence to November 2, 2016, when the plaintiff Lime Rock Park LLC filed its reply brief; and thence to May 10, 2017, when the appeal was heard by the court (Moore, J.) and plaintiff introduced Exhibits 1 through 4, including a warranty deed, quit claim deed, certificate change of name, and quit claim deed; and thence to August 29, 2017, when the court requested additional argument and requested the parties consent to an extension of the 120-day rule; and thence to August 30, 2017, when the court heard further argument and ordered plaintiff Lime

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Rock Park, LLC and defendant Planning and Zoning Commission of the Town of Salisbury to file supplemental briefs on the cases cited during the argument; and then to September 11, 2017, when the plaintiff Lime Rock Park, LLC filed a supplemental brief and the defendant Planning and Zoning Commission of the Town of Salisbury filed a supplemental brief, and thence to September 13, 2017, when counsel for all three parties requested that the court provide copies of the trial court documents from the Adams v. Vaill case referenced in court order 153.00, which motion the court responded to on September 14, 2017 and referred counsel to the referenced volume of Supreme Court Records and Briefs at the State Law Library; and thence to September 25, 2017, when the court ordered the parties to appear for additional argument; and thence to September 26, 2017, when the intervening defendant Lime Rock Citizens Council, LLC filed a notice of supplemental authority; and thence to September 26, 2017, when the court ordered the parties to supplement the record in various ways; and thence to October 6, 2017, when all parties provided additional documents in response to the court's request for same; and thence to October 10, 2017, when the court heard further argument; and thence to January 31, 2018, when the court issued a Memorandum of Decision finding that plaintiff Lime Rock Park, LLC was aggrieved and denying the appeal in part and sustaining the appeal in part, and entered judgment; and thence to February 20, 2018, when all three parties filed motions to reargue the court's decision, which motions were granted on February 27, 2018; and thence to February 28, 2018 when the parties filed objections and/or oppositions to the opposing parties' motions to reargue; and thence to March 6, 2018, when exhibits were filed in support of the Planning and Zoning Commission's motion to reargue; and thence to March 8, 2018,

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when the plaintiff Lime Rock Park, LLC filed a reply to the Planning and Zoning Commission's objection to motion to reargue; and thence to March 12, 2018, when the defendant Planning and Zoning Commission filed a reply to plaintiff Lime Rock Park, LLC's objection to motion to reargue; and thence to March 13, 2018, when the defendant Planning and Zoning Commission moved for permission to supplement the record, which motion was denied by the court (Moore, J.) on March 20, 2018; and thence to March 19, 2018, when the court heard argument; and thence to April 10, 2018, when the court ordered the Commission to search for various referenced minutes; and thence to April 18, 2018, when the Planning and Zoning Commission filed documents in response to the court order; and thence to April 24, 2018, when the court ordered the defendant Planning and Zoning Commission to supplement the record; and thence to May 3, 2018, when the defendant Planning and Zoning Commission provided additional documents in response to the court's request for same; and thence to July 17, 2018, when the court issued its Amended Memorandum of Decision finding that plaintiff Lime Rock Park, LLC was aggrieved and denying the appeal in part and sustaining the appeal in part, and entered judgment.

Whereupon it is adjudged that the appeal of plaintiff Lime Rock Park, LLC is sustained in part and denied in part.

BY THE COURT,

Assistant Clerk

Pamela F. Longwell Deputy Chief Clerk 27 Main Street P.O. Box 0548 Salisbury, CT 06068



(860) 435-5190 FAX: (860) 435-5172

TOWN OF SALISBURY PLANNING AND ZONING COMMISSION

To: Salisbury Planning Commission 💥

Fr: Michael W. Klemens, Chair

July 16, 2015

RE: LRP Proposed Amendments to Zoning Regulations.

At the request of the Commission, Vice-Chair Jon Higgins, ZEO Nancy Brusie, Planning Commission Counsel Charles Andres and I have worked together to compile the attached documents. This draft incorporates LRP's comments as well as public comments received over the last few months and represents our efforts to balance competing interests over the LRP operations as well as to bring much-needed clarity to the relationship between the series of court-order stipulations entered into by the LRP and its neighbors and our regulations.

My goal for our meeting on July 20th is for the P and Z to review these proposed regulations, to reach consensus on these so that we can send them to COG for review and set a date for public hearing at our first meeting in September. Our meeting on July 20th is neither a public workshop nor a public hearing, and I do not plan to allow public comments to disrupt our deliberations. The Commission has heard at length from all parties, most recently at our last meeting, and there is no need for further input at this juncture. Appropriately public input and comments should be reserved for and presented at the public hearing on this matter in September.

To guide you through some of the most important changes! offer the following comments:

In the text of 221.2 we now list the various uses that we have determined to be incidental/accessory to the operation of LRP. While many of these uses require additional approvals, permits, or be prohibited if they were conducted in the portions of the RE zone outside of LRP, we have determined that the list of uses as presented are appropriately considered part of the LRP operations. As with any accessory use that involves structures, grading, building, or other regulated activities, LRP would still need to obtain when necessary zoning ,building and other permits as required by our regulations. The creation of these lists began several years ago through the series of meetings that Jon Higgins had with LRP and the neighbors, as well as subsequent efforts by LRP's CFO Georgia Blades, and we owe both these individuals our gratitude in making sense out of the table of uses vis a vis the reality of the scope of operations at LRP.

- 2. While there has been some discussion in general about the utility of the Table of Uses (205.2 and 205.3) on advice of our counsel we have added motor vehicle race track as permitted by special permit in the RE zone. This allows for expansion of the LRP into other portions of the RE zone but such expansion would require a special permit which would allow a full public discussion of the nature and type of any proposed expansion of LRP into contiguous non-track portions of the RE zone. We have annotated Table 205.3 to indicate that accessory uses at LRP are found in section 221.2 For those of you that have been following the proposed changes to Table 205.2 closely, you will note that many of the proposed changes to this table that had been in the various drafts circulated over the past months have been deleted and the Table 205.2 with a single addition is proposed. This is because this table deals with principle uses and we have through discussions with LRP and our counsel determined that these are appropriately accessory/incidental uses to the operation of LRP i.e., that these are not principle uses within the context of the LRP.
- 3. We are including the attached CT statutory definition of motor vehicle proposed to be in our section of definitions. This should resolve ambiguities concerning items such as go-karts.
- 4. On the advice of our legal counsel, we have incorporated into our regulations (221.1 and 221.2) the specifics of the stipulations that govern activities on the track. Rather than referring obliquely to these stipulations in our regulations by reference, we have incorporated the specifics of these stipulations into our regulations. We now have a seamless and transparent set of regulations which mirror the stipulations. This confirms that violations of the stipulations are violations of our zoning, which may be helpful to all parties as it provides a local level of resolution before having to incur the expense of returning to the courts to address purported violations. It also respects our legal authority over the RE zone as a court-approved change in those stipulations would require a corresponding change in our zoning regulations in order to be permitted. This should give the community a higher level of comfort than the status quo. While this may be perceived as creating more work for us locally, according to our ZEO it shouldn't, as when things are not operating as they should, she is the first to hear the complaints from either party.
- 5. Section 221.3 lists the activities that are not accessory or incidental to the LRP operations that would be permitted by special permit. This list has been generated by testimony from LRP and the neighbors. Note that there is a regulatory carve-out for a single Fourth of July fireworks celebration as has been the custom for some time. One justification (though by no means the only) for regulating these other events within the context of the LRP is that nature of the track's size and location enable them to host events that exceed the capacity of other local venues with concomitant impacts to the neighborhood.

221.1 Track for Racing Motor Vehicles

A track for racing MOTOR VEHICLES-_excluding motorcycles-_as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the following

- a. No motor vehicle races shall be conducted on any such track except during such hours as permitted by Court Order dated 5/12/59 and subsequent related Court Orders on file in the Planning and Zoning Office, or the Town Clerk's Office and as appended to these regulations as
- 221.4 in accordance with the following parameters:

 (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays

 Activity with mufflered racing car engines shall be permitted as follows:
- (2)
 - the transfer of the particle of the property of the particle o On any weekday between 9:00 p.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6)
 - occasions during any one calendar year

 Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- Activity with unmufflered racing car engines shall be permitted as follows:
 - On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - On Saturdays and more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 nim. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified provided that no qualifying heats or races shall be permitted on such Fridays,
 - In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "min'date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above.
 - On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - In the event any of said holidays falls on a Tuesday. Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours

The parameters set forth herein are identical to those set forth in the Amended Stipulation of Judement entered by the Court, Dranginis, J., on March 21, 1988 in the civil action. Ann Adams: et al. v. B. Franklin Vail, et al., CV No. 15.459 (Iudicia) District of Utchfield at Litchfield)

- of 12:00 noon and 6:00 p.m., but in the event the normissible unoufflered activity of the Tuesday next preceding the holiday shall be forfeited.
- (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
- (iii) In no event shall any such holidays increase the number of Saturdays of nermissible unmufflered activity beyond ten (10) as provided in Paragraph b) above.
- (4) Prohibited activity upon the track property shall include the revying or testing of mufflered or unmufflered car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 a.m. excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 a.m.

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- (5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.
- (6) A "racing car" is defined as any car entered in an event on an asphalt track.
- (7) Racing of motorcycles is prohibited. Nevertheless, specifically permitted are non-racing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.
- b. Where the land on which a race track is situated abuts or faces a residential zone district, there shall be a minimum of fifty foot buffer strips along each yard, or part thereof, so abutting or facing, which shall contain a screen of shrubbery not less than fifteen feet in width nor less than six feet in height within one year of the adoption of this, amendment to the regulations. This screen shall thereafter be suitably and neatly maintained by the owner, tenant and/or their agent. Any such screen shall consist of at least fifty percent evergreens so as to maintain a dense screen at all seasons of the year.
 - c. The lot shall have adequate frontage on or access to a principal traffic street or street capable of handling the volume of traffic to be generated thereon. The access and service roads connecting with the principal traffic street or streets shall be so located and designed as to avoid unsafe traffic conditions or congestion. Traffic control devices and lighting of access points at or across street or access intersections shall be provided at the expense of the owner when required and provision shall be made for safe pedestrian traffic to, from and within the lot. The design and location of access and intersections with public highways shall be subject to the approval of the Selectmen for a town road or the Connecticut Department of Transportation for a state highway.
 - d. Adequate off-street parking shall be provided to accommodate the vehicles of employees, proprietors, participants, customers, visitors and others.
 - e. Not more than three signs, not more than 50 square feet each, advertising the use of the premises shall be permitted. Any sign not consistently visible from off the premises is permitted. Directional signs, not more than six square feet each, are permitted.

- f. No sign, with the exception of scoreboards, visible off the premises shall be illuminated by exposed tubes or other exposed light sources, nor shall any flashing sign be visible from off the premises. Spot or other lighting of any sign, building, structure, land track, parking space or any other part of the premises shall be so arranged that the light source is not visible from any point off the premises.
- 221.2 Permitted uses incidental to and accessory to the operation of the track for racing motor vehicles include, retail stores professional or business offices, fire or emergency services, ATMs, restaurants, and food stands, and camp grounds (subject to court injunction). Incidental accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of, automotive parts and accessories; car washes, auto service and repairs; filling stations; commercial parking, laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses may include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment. Camping by spectators and participants is allowed as an accessory use to permissible automobile racing events subject to the following restrictions:
- a. All camping and camping vehicles shall be limited to the Race Track infield. The Race Track infield is defined as the area inside of the 1.53 mile asphalt track, as said track existed on May 1.1979;
- b. No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 n.m. to 6:00 a.m. except those which are 1) on official track business; and 2) parked in the parking lot area adjacent to the track office, as it now exists:
- c. The back road and Race Track entrance, which runs nast that property now known as the Williams' property shall be closed between the hours of 11:00 p.m. and 6:00 a.m. to all traffic except emergency and service vehicles.
- 221.3 The following uses are deemed not accessory or incidental to the track for racing motor vehicles and but are allowed subject to a special permit. Fireworks displays (with the exception of a single evening display during the annual Independence Day period in early July for charitable purposes), concerts, flea markets, craft fairs, food shows, non-automotive trade shows, and garden shows.

221.4 Injunctions

² These restrictions are identical to those set forth in the stipulated judgment of the Court, O'Neill, L., dated September 19, 1979 in Lime Rock Foundation, Inc. v. Zoning Board of Appeals of the Town of Salisbury. No. 16,4045 (Judicial District of Litchfield).

MOTOR VEHICLES. USE OF THE HIGHWAY BY VEHICLES. TANA GASOLINE

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Title 14

"Median divider" means an intervening space or physical barrier or clearly indicated dividing section separating traffic lanes provided for vehicles proceeding in opposite directions.

- (24) "Motor bus" includes any public service motor vehicle operated in whole or in part upon any street or highway in such manner as to afford a means of transportation, by indiscriminately receiving or discharging passengers, or running on a regular route or over any portion thereof or between fixed termini.
- (25) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle or seat on which the rider sits or a platform on which he stands, and with or without a side car, except any vehicle in which the driver's seat is completely or partially enclosed and the motor on such vehicle is not within such enclosed area, and shall include bicycles having a motor attached, except/bicycles propelled by means of a helper motor as defined in section 14-286
- (26) "Motor vehicle" means any vehicle which is propelled or drawn by any power other than muscular except aircraft, motor boats, road rollers, baggage trucks used about railroad stations or other mass transit facilities, electric buttery-operated wheel chairs when operated by physically handicapped persons at speeds not exceeding lifteen miles per hour, golf carts operated on highways solely for the purpose of crossing from-one part of the golf course to another, agricultural tractors, farm implements, such vehicles as run only upon rails or tracks, self-propelled snow plows, snow blowers and lawn mowers, when used for the purposes for which they were designed and operated at speeds not exceeding four miles per hour, whether or not the operator rides on or walks behind such equipment, bicycles with helper motors as defined in section 14-286 and any other vehicle not suitable for operation on a highway.

 (27) "Motor vehicle registration" or "registration" includes the certificate
- thereof and the number plate or plates used in connection therewith.
- (28) "Nonresident" means any person whose legal residence is in some slate other than Connecticut or in a foreign country.

- (29) "Nonskid device" means any device applied to the tires, wheels, axies or frame of a motor vehicle for the purpose of increasing the traction thereof.
- (30) "Number plate" means any sign or marker furnished by the commissioner on which is displayed the registration number assigned to such motor vehicle by said commissioner
- (31) "Officer" includes any constable, sheriff, deputy sheriff, inspector of motor vehicles, state policeman or other official authorized to make arrests or to serve process, provided he shall be in uniform or display his badge of office in a conspicuous place when making an arrest.
 - "Operator" or "driver" means any person who operates a motor Operator of the second of the

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205.2 TABLE OF USES-Ru	ral Enterp	rise; Com	mercial 8	Industria	l Zones	page 1
		P. B. WALL	openia je vije.	37.5		<u> </u>
	RE	C-20	CG-20	LI-1		
Retail Store	Not Permitted	Zoning Permit	Zoning Parmit	Not Permitted		
Personal Service	Not Permitted	Zoning Permit	Zoning Permit	: Not Permitted	l	
Professional or business office	Special Permit	Site Plan®	Site Plan	Sile Plan	***************************************	A A A A A A A A A A A A A A A A A A A
Bank or financial institution	Not Permitted	Site Plan	Sile Plan	Not Permitted		
Antique / second hand store	Not Permitted	Zoning Permit	Zoning Permit	Not Permitted		
Auto sales, service, repair, filling station/car wash	Not Permitted	Not Permitted	Special Permit	Special Permit		
Laundry or dry cleaning	Not Permitted	Special Permit	, Special . Permit	Special Permit		
Commercial Parking Lot	Site Plan	Site Plan	Sile Plan	Not Permitted		
Restaurant - Low Turnover	Not Permitted	Site Plan	Site Plan	Speçial Permit		***************************************
Restaurant - High Turnover	Not Permitted	Special Permit	Special Permit	Special Permit		
Hotel or Motel	Special Permit	Special Permit	Special (*) Permit	Not Permitted	1112	*************
Manufacturing and assembly of parts for products	Special Permit	Not Permitted	Not Permitted	Special Permit		
Wholesale distribution, storage warehouse, truck terminal	Not Permitted	Not Permitted	Special Permit	Special Permit	***************************************	
Contractor equipment storage	Special Permit	Not Permitted	Special Permit	Not Permitted		
Contractor equipment sales	Not Permitted	Not Permitted	Special **	Not Permitted	fikkerenrikenberanties	
umber or building material storage.	Not Permitted	Not Permitted	Special Permit	Special Permit		
Printing establishment	Special Permit	Special Permit	Special Permit	Special Permit		
Carpentry or woodworking	Sile Plan	Site Plan	Site Plans	Site Plan	**************************************	
Processing dairy products	Special Permit	Not Permitted	Not Permitted	Special Permit		

Research Laboratory	Special Permit	Not Permitted	Not Permitted	Special Permit		
Single family dwelling	Zoning Permit	Zaning Permit	Zoning Permit	Not Permitted		
205.2 TABLE OF USES-	Rural Ente	rprise; Co	mmercial	& Industr	ial Zones	page 2
	RE	C-20	CG-20	10 Li-1 /		
Apartment in business building	Not Permitted	Special Permit	Special Permit	Not Permitted		
Multi-family dwelling	Special Permit	Special Permit	Special Permit	Not Permitted		
Town or non-profit affordable housing	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Farm	No Permit Required	Not Permitted	Not Permitted	Not Permitted		
Nursery and/or Commercial Greenhouse	Site Plan	Site Plan	Site Plan	Not Permitted		
Farm Stand	Zoning Permit	Not Permitted	Not Permitted	Not Permilled		
Permanent sawmill	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Temporary sawmill	Zoning Permit	Not Permitted	Not Permitted	Not Permitted		
Commercial livery, boarding or riding stable	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Veterinary hospital or kennel	Special Permit		Not Permitted	Not Permitted	1	00-2[4-1455] 00-14-15-1
Veterinary clinic	Special Permit		Special & Permit & Pe	Special Permit		
Veterinary office	Special Permit		Zoning Permil	Not Permitted		
Municipal building or use	Special Permit	Special Permi		Special Permit		
Volunteer fire and emergency services	41.30 (204.21)		Special	Special Permit	1	
School, College operated by non- profit organization		Special Permi	Special	Not Permitted	.,1111111	
Group day care	Special Permit	Special Penni	Special Permit	Not Permitted		
Library or museum by a non profit organization	Not Permitted	Special Permi	Special 11	Special Permit		
Religious or philanthropic structures and uses	Special Fernic	Special Permi	Special (Not Permitted		
Fraternal club or lodge	Not Permitted		्र Special हैं। अं्Permit ंस्ट	Special Permit		
Hospital and medical clinic	Special Permit	Special Permi	Special Permit	Not Permitted		

Skilled nursing, assisted living, convalescent, continuing care retirement	Special Permit	Special Permit	Special Permit	Not Permitted		
	in sight	Company fast poor of		na de la companya de		
205.2 TABLE OF USES- RO	ıral Enterp	STATES	560 (NAS)	k Industria	I Zones	page 3
	RE	C-20	CG-20	ў. Ш-1	•	
Cemetery	Special Permit	Special Permil	Special Permit	Special Permit		_
Commercial golf course		Not Permitted	Not Permitted	Not Permitted	in Tig. Garage	_
Outdoor commercial uses: skating rink, ski area, golf driving range, tennis court, beach, swimming and picnic areas		Not Permitted		Not Permitted		
Golf course, outdoor tennis club or riding club sponsored by non-profit organization		t i i jeg bej	Not Permitted	Not Permitted		
Indoor tennis, racquetball or squash facility	Site Plan	Sile Plan	Site Plan	Not Permitted		
Exercise or dance studio	Not Permitted	Site Plan	Sile Plan	Not Permitted		
Musical theater, Instruction, (Stage of Film)	Not Permitted	Site Plan	Site Plan	Not Permitted		
Track for Racing Molor Vehicles	Special Permit		Not Permitted	Not Permitted		
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205.3 TABLE OF ACCESSORY USES

THESE ACCESSORY USES, BUILDING AND STRUCTURES ARE SUBJECT TO THE REQUIREMENTS OF SECTIONS 207 AND 208 AND ARE ALLOWED IN ALL ZONES UNLESS OTHERWISE STATED IN THE REGULATIONS

Farming, gardening, raising of crops or fruit and keeping of farm animals	No Permit Required
Renting of room and board	Zoning Permit
Home office of convenience	No Permit Required
Apartment on Single Family Residential Lot এই এই ই	See Section 208
Keeping horses (max.3)	Zoning Permit
Fence over 8 feet height	Zoning Permit
Family day care home	Zoning Permit
Temporary special events	No Permit or Special Permit
Excavation and grading	Special Permit with exceptions as stated under Section on Excavation and Grading Art.VI
Signs	See Section on Signs .
Accessory buildings and structures.	Zoning Permit or Site Plan
Dock Dock	Zoning Permit
Construction site trailer	Temporary Use Zoning Permit
Single commercial vehicle max, 200 sq.ft. footprint	No Permit Required
More than one commercial vehicle and/or commercial equipment storage	Zoning Permit
Wireless telecommunication antennae	Site Plan
Outdoor Woodburning Furnace	See Section 208

Activities incidential/accessory to Lime Rock Park, see Section 221

221.1 Track for Racing Motor Vehicles

A track for racing MOTOR VEHICLES, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the following:

- a. No motor vehicle races shall be conducted on any such track except in accordance with the following parameters¹:
- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows:
 - A. On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - B. Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows:
 - A. On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - B. On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - C. On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays.
 - D. In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above.
 - E. On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - (i) In the event any of said holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited.

The parameters set forth herein are identical to those set forth in the Amended Stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, <u>Ann Adams, et al. v. B. Franklin Vail, et al.</u>, CV No. 15,459 (Judicial District of Litchfield at Litchfield).

- (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
- (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmufflered activity beyond ten (10) as provided in Paragraph b) above.
- (4) Prohibited activity upon the track property shall include the revving or testing of mufflered or unmufflered car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.
- (5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.
- (6) A "racing car" is defined as any car entered in an event on an asphalt track.
- (7) Racing of motorcycles is prohibited. Nevertheless, specifically permitted are non-racing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.
- b. Where the land on which a race track is situated abuts or faces a residential zone district, there shall be a minimum of fifty foot buffer strips along each yard, or part thereof, so abutting or facing, which shall contain a screen of shrubbery not less than fifteen feet in width nor less than six feet in height within one year of the adoption of this amendment to the regulations. This screen shall thereafter be suitably and neatly maintained by the owner, tenant and/or their agent. Any such screen shall consist of at least fifty percent evergreens so as to maintain a dense screen at all seasons of the year.
- c. The lot shall have adequate frontage on or access to a principal traffic street or street capable of handling the volume of traffic to be generated thereon. The access and service roads connecting with the principal traffic street or streets shall be so located and designed as to avoid unsafe traffic conditions or congestion. Traffic control devices and lighting of access points at or across street or access intersections shall be provided at the expense of the owner when required and provision shall be made for safe pedestrian traffic to, from and within the lot. The design and location of access and intersections with public highways shall be subject to the approval of the Selectmen for a town road or the Connecticut Department of Transportation for a state highway.
- d. Adequate off-street parking shall be provided to accommodate the vehicles of employees, proprietors, participants, customers, visitors and others.
- e. Not more than three signs, not more than 50 square feet each, advertising the use of the premises shall be permitted. Any sign not consistently visible from off the premises is permitted. Directional signs, not more than six square feet each, are permitted.
- f. No sign, with the exception of scoreboards, visible off the premises shall be illuminated by exposed tubes or other exposed light sources, nor shall any flashing sign be visible from off the

premises. Spot or other lighting of any sign, building, structure, land track, parking space or any other part of the premises shall be so arranged that the light source is not visible from any point off the premises.

- 221.2 Permitted uses incidental to and accessory to the operation of the track for racing motor vehicles include: retail stores, professional or business offices, fire or emergency services, ATMs, restaurants, and food stands. Incidental accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of automotive parts and accessories; car washes, auto service and repairs; filling stations; commercial parking; laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses may include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment.
- 221.3 Camping by spectators and participants is allowed as an accessory use to permissible automobile racing events subject to the following restrictions²:
- a. All camping and camping vehicles shall be limited to the Race Track infield. The Race Track infield is defined as the area inside of the 1.53 mile asphalt track, as said track existed on May 1, 1979;
- b. No motor vehicles shall be parked in the Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are 1) on official track business; and 2) parked in the parking lot area adjacent to the track office, as it now exists;
- c. The back road and Race Track entrance, which runs past that property now known as the Williams' property³, shall be closed between the hours of 11:00 p.m. and 6:00 a.m. to all traffic except emergency and service vehicles.
- 221.4 The following uses are deemed not accessory or incidental to the track for racing motor vehicles but are allowed subject to a special permit: Fireworks displays (with the exception of a single evening display during the annual Independence Day period in early July for charitable purposes), concerts, flea markets, craft fairs, food shows, non-automotive trade shows, and garden shows.

² These restrictions are identical to those set forth in the stipulated judgment of the Court, O'Neill, J., dated September 19, 1979 in <u>Lime Rock Foundation</u>, Inc. v. Zoning Board of Appeals of the Town of Salisbury, No. 16,4046 (Judicial District of Litchfield).

³ Assessor's Map No. 04, Lot 07; 52 White Hollow Road.

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MOTOR VEHICLES. USE OF THE HIGHWAY BY VEHICLES GASOLINE

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- (23) "Median divider" means an intervening space or physical barrier or clearly indicated dividing section separating traffic lanes provided for vehicles proceeding in opposite directions.
- (24) "Motor bus" includes any public service motor vehicle operated in whole or in part upon any street or highway in such manner as to afford a means of transportation by indiscriminately receiving or discharging passengers, or running on a regular route or over any portion thereof or between fixed termini.
- (25) "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle or seat on which the rider sits of a platform on which he stands, end with or without a side car, except any vehicle in which the driver's seat is completely or partially enclosed and the motor on such vehicle is not within such enclosed area, and shall include bicycles having a motor attached, except bicycles propelled by means of a helper motor as defined in section 14-286.
- (26) 'Motor vehicle' means any vehicle which is propelled or drawn by any nower other than muscular, except aircraft, motor boats, road rollers, baggage trucks used about railroad stations or other mass transit facilities, electric battery-operated wheel chairs when operated by physically handicapped persons at speeds not exceeding fifteen miles per hour, golf carts operated on highways solely for the purpose of crossing from one part of the golf course to another, ogricultural tractors, farm implements, such vehicles as run only upon rails or tracks, self-propelled snow plows, snow blowers and lawn mowers, when used for the purposes for which they were designed and operated at speeds not exceeding four miles per hour, whether or not the operator rides on or walks behind such equipment, blcycles with helper motors as defined in section 14-286 and any other vehicle not sultable for operation on a highway.
- (27) "Motor vehicle registration" or "registration" includes the certificate thereof and the number plate or plates used in connection therewith.
- (28) "Nonresident" means any person whose legal residence is in some state other than Connecticut or in a foreign country,
- (29) "Nonskid device" means any device applied to the tires, wheels, axis or frame of a motor vehicle for the purpose of increasing the traction thereof.
- (30) "Number plate" means any sign or marker furnished by the commissioner on which is displayed the registration number assigned to such motor vehicle by said commissioner.
- (31) "Officer" includes any constable, sheriff, deputy sheriff, inspector of motor vehicles, state policeman or other official authorized to make arrests of to serve process, provided he shall be in uniform or display his badge of office in a conspicuous place when making an arrest.
 - (32) "Operator" or "driver" means any person who operates a motor

Skilled nursing, assisted living, convalescent, continuing care retirement	Special Permit	Special Permit	Special Permit	Not Permitted		
205.2 TABLE OF USES- R	ural Enterp	orise; Con	nmercial &	& Industria	al Zones	page 3
,	RE	C-20	CG-20	LI-1		
Cemetery	Special Permit	Special Permit	Special Permit	Special Permit		
Commercial golf course	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Outdoor commercial uses: skating rink, ski area, golf driving range, tennis court, beach, swimming and picnic areas	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Golf course, outdoor tennis club or riding club sponsored by non-profit organization	Special Permit	Not Permitted	Not Permitted	Not Permitted		
Indoor tennis, racquetball or squash facility	Site Plan	Site Plan	Site Plan	Not Permitted		
Exercise or dance studio	Not Permitted	Site Plan	Site Plan	Not Permitted		
Musical theater, Instruction, (Stage of Film)	Not Permitted	Site Plan	Site Plan	Not Permitted	***************************************	
Track for Racing Motor Vehicles	Special Permit	Not Permitted	Not Permitted	Not Permitted		
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205.3 TABLE OF ACCESSORY USES

THESE ACCESSORY USES, BUILDING AND STRUCTURES ARE SUBJECT TO THE REQUIREMENTS OF SECTIONS 207 AND 208 AND ARE ALLOWED IN ALL ZONES UNLESS OTHERWISE STATED IN THE REGULATIONS

Farming, gardening, raising of crops or fruit and keeping of farm animals	No Permit Required
Renting of room and board	Zoning Permit
Home office of convenience	No Permit Required
Apartment on Single Family Residential Lot	See Section 208
Keeping horses (max.3)	Zoning Permit
Fence over 8 feet height	Zoning Permit
Family day care home	Zaning Permit
Temporary special events	No Permit or Special Permit
Excavation and grading	Special Permit with exceptions as stated under Section on Excavation and Grading Art.VI
Signs	See Section on Signs
Accessory buildings and structures	Zoning Permit or Site Plan
Dock	Zoning Permit
Construction site trailer	Temporary Use Zoning Permit
Single commercial vehicle max. 200 sq.ft footprint	No Permit Required
More than one commercial vehicle and/or commercial equipment storage	Zoning Permit
Wireless telecommunication antennae	Site Plan
Outdoor Woodburning Furnace	See Section 208
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Activities Incidential/accessory to Lime Rock Park, see Section 221

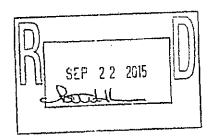
- 1 P&Z 7-20-2015 (Approved on Sept. 8th, 2015 as seen in the Transcript from Allan
- 2 Reporting Services)
- 3 Planning and Zoning Meeting Minutes July 20, 2015
- 4 Commissioners Present: Chairman, Michael Klemens; Jon Higgins and Marty Whalen.
- 5 Alternates Present: Michael Flint, Danella Schiffer, and Cathy Shyer. Absent: Allen Cockerline
- 6 and Fred Schmidt. Also Present: Nancy Brusie, ZEO; Garrett Richardson, Recording Secretary.
- 7 Chairman Michael Klemens opened the meeting at 6:30. C. Shyer and D. Schiffer were
- 8 appointed Voting Alternates for the evening.
- 9 The Agenda was amended to include a discussion of the August meeting dates. The modified
- 10 Agenda was moved by J. Higgins, seconded by M. Whalen and approved.
- 11 The Minutes of July 6th were reviewed and amended. The amended Minutes were moved by
- 12 M. Whalen, seconded by J. Higgins and approved.
- 13 N. Brusie discussed the ZEO's report. She noted that revised plans for 146 Millerton Road will
- 14 probably come before the Commission in September.
- 15 M. Klemens asked for Public Comments but there were none at this time.
- 16 There was a discussion of the meeting dates for August. Since there is little activity at present it
- 17 was determined by the Commission to cancel the August meeting dates.
- There was a deliberative session among the Commission concerning Lime Rock Park and the RE
- 19 Zone.
- 20 It was moved by J. Higgins to set the Public Hearing for the proposed Amendments to
- 21 221.1-4, Track for Racing Motor Vehicles and 205.2-3, Table of Uses, for September 8th at
- 22 6:45 in the Salisbury Town Hall, and to send the proposed Amendments to CCOG for
- 23 review with the following modifications:
- 24 221.1(7) e. not consistently visible: The word "consistently" is added.
- 25 221.3 A new paragraph denoted 221.3 will begin: Camping by spectators and
- 26 participants is allowed as an accessory use to permissible automobile racing events
- 27 subject to the following restrictions.... and includes items a. b. and c.
- 28 221.3 c. footnote #3 will be added to clarify the term, "Williams property" as 52
- 29 White Hollow Road with the appropriate assessment number.
- 30 221.4 now begins: The following uses are deemed not accessory or incidental to the
- 31 track for racing motor vehicles . . .

Ť	The motion was seconded by M. Whalen, Roll Call Votes were as follows: For: J.
2	Higgins, D. Schiffer, C. Shyer, M. Whalen and M. Klemens. Against: None. The
3	motion passed.
4	r.
5	There being no further business the motion was made by M. Whalen and seconded by J. Higgins
6	to adjourn at 7:30.
7	
8	Submitted by Garrett Richardson, 7/21/2015
9	
10	
11	

- 1 Planning and Zoning Meeting Minutes September 8, 2015
- 2 Commissioners Present: Chairman, Michael Klemens; Allen Cockerline, Jon Higgins, and Marty Whalen.
- 3 Alternates Present: Cathy Shyer and Danella Schiffer. Absent: Fred Schmidt and Michael Flint. Also
- 4 Present: Nancy Brusie, ZEO.
- 5 The meeting was called to order by Chairman, Michael Klemens at 6:30.
- The Agenda was amended to add review and approve Invoice #666292 in the amount of \$490.00 from
- 7 Attorney Charles Andres. Amended Agenda was moved by J. Higgins, seconded by M. Whalen and
- 8 approved.
- 9 The Minutes of July 20th were reviewed and amended. The amended Minutes were moved by J.
- 10 Higgins, seconded by M. Whalen and approved. M. Klemens asked for Public Comments to which
- 11 there was none at this time.
- 12 Motion was made by A. Cockerline, seconded by M. Whalen and approved to pay Invoice #666292
- 13 for Attorney C. Andres.
- 14 Public Hearing 6:45
- 15 Public Hearing for the Proposed Amendment of Section 221.1 of the Salisbury Zoning Regulations was
- opened by Chairman Klemens. Due to the large turnout of citizens, the public hearing was recessed until
- 17 7:00 PM to be re-convened at the Salisbury Congregational Church. (A complete transcript of this public
- 18 hearing will be forthcoming and will be attached to these minutes).
- 19 Public Hearing was reconvened at 7:00 PM at the Salisbury Congregational Church. Commissioner
- 20 Whalen was asked by the attorneys to recuse himself because he is an abutter and also President of the
- 21 Lime Rock Cemetery Association. Commissioner Whalen complied and C. Shyer was appointed voting
- 22 alternate in his place. After listening to 2 hours of testimony, a motion was made by J. Higgins, seconded
- 23 by A. Cockerline and carried to continue this public hearing to October 19, 2015 at the Salisbury Town
- 24 Hall
- 25 Motion was made by J. Higgins, seconded by A. Cockerline and carried to adjourn this meeting at
- 26 9:20 PM.

27

28 Respectfully submitted by Nancy Brusie, ZEO Approved: 9/21/15



1 Planning and Zoning Meeting Minutes - October 19, 2015

- 2 Commissioners Present: Chairman, Michael Klemens, Allen Cockerline, Jon Higgins, Cathy
- 3 Shyer and Marty Whalen. Alternates Present: Michael Flint and Danella Schiffer. Also Present:
- 4 Nancy Brusie, ZEO; Garrett Richardson, Recording Secretary; Charles Andres, P&Z Attorney.
- 5 Chairman Michael Klemens opened the meeting at 6:30. M. Flint was appointed Voting Alternate
- 6 for the evening.
- 7 The Agenda was moved by J. Higgins, seconded by M. Whalen and approved by all.
- 8 The Minutes of October 5th were reviewed and amended. The amended Minutes were then
- 9 moved by M. Whalen, seconded by J. Higgins and approved by all.
- 10 Chairman Klemens asked for public comments but there were none at this time.
- J. Higgins moved to set the public hearing for Special Permit #2015-0050 for a Home
- Occupation per section 2102 the Salsibury Zoning Regulations at 511 Lime Rock Road in
- Lakeville for Monday, November 16th at 6:45 in the Salisbury Town Hall. The motion was
- 14 seconded by A. Cockerline and approved by all.
- 15 It was moved by A. Cockerline, seconded by J. Higgins and approved by all to pay invoice
- #672271 for the amount of \$787.00 to Attorney C. Andres.
- 17 It was moved by A. Cockerline, seconded by J. Higgins and approved by all to pay invoice
- 18 #672275 for the amount of\$3,198.60 for services related to the Lime Rock Park hearing to
- 19 Attorney C. Andres.
- 20 At 6:45 Chairman M. Klemens initiated the continuation of the Public Hearing concerning
- 21 Sections 221.1, 205.2 and 205.3 pertaining to Lime Rock Park and to add a definition of a Motor
- 22 Vehicle to the Salisbury Zoning Regulations, M. Whalen recused himself. M. Klemens recessed
- 23 the Public Hearing to relocate to the Salisbury Congregational Church to accommodate the large
- 24 number of individuals attending this hearing.

25

The Public Hearing was closed at 10:28.

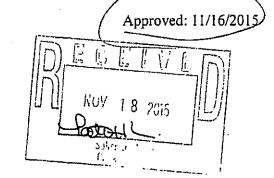
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Submitted by G. Richardson and N. Brusie

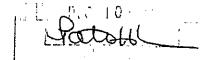
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1 Planning and Zoning Meeting Minutes - November 16th, 2015



- 2 Commissioners Present: Chairman, Michael Klemens, Allen Cockerline, and Cathy Shyer.
- 3 Alternates Present: Michael Flint and Danella Schiffer. Also Present: Nancy Brusie, ZEO;
- 4 Garrett Richardson, Recording Secretary; Charles Andres, P&Z Attorney. Absent: Jon Higgins
- 5 and Marty Whalen.
- 6 Chairman Michael Klemens opened the meeting at 6:30. Michael Flint and Danella Schiffer were
- 7 appointed Voting Alternates for the evening.
- 8 The first order of business was the election of officers. M. Klemens presented the slate of
- 9 officers as follows: Michael Klemens for Chairman, Martin Whalen for Secretary and Jon
- Higgins for Vice-Chairman. M. Klemens also read correspondence from J. Higgins stating that
- 11 he was in support of the slate of officers presented. A. Cockerline moved that the slate be
- approved. The motion was seconded by C. Shyer, and approved by all with M. Klemens
- 13 abstaining.
- 14 The Agenda was amended to include the reappointment of Voting Alternates. A. Cockerline
- moved to approve the amended Agenda. The motion was seconded by C. Shyer and
- 16 approved by all.
- 17 The Minutes of October 19th were reviewed. The Minutes were then moved by A. Cockerline,
- 18 seconded by C. Shyer and approved by all.
- 19 M. Klemens asked for Public Comments, but there were none at this time.
- 20 There was a discussion of the By-Laws concerning meeting dates and times. It was decided that
- 21 M. Flint would consult with Attorney Andres about modifications needed for the By-Laws to
- 22 present to the Commission at the next meeting. The discussion of By-Laws and setting meeting
- 23 dates were tabled for further discussion at that time.
- 24 M. Klemens moved that Michael Flint and Danella Schiffer be reappointed as Voting
- 25 Alternates for another term, serving from November 2015 to November 2017. The motion
- 26 was seconded by A. Cockerline and approved by all.
- 27 There was a continuation of Public Hearing for a Special Permit Application #2015-0049 for
- 28 property located at 138 Housatonic Road for construction of an accessory structure in the Inner
- 29 Housatonic River Corridor. Correspondence from Jocelyn Ayer, representing the Housatonic
- 30 River Commission, was read into the record stating that the HR Commission approved the
- 31 application. There was some discussion. A. Cockerline moved to close the public hearing at
- 32 6:50. The motion was seconded by C. Shyer and approved by all.
- 33 The Commission noted that they had expected a more detailed account from the Housatonic
- 34 River Commission. The motion was then made by A. Cockerline and seconded by C. Shyer

- to approve application 2015-0049 as meeting the Salisbury Zoning Regulations. Roll call
- votes were as follows: For: A. Cockerline; M. Flint; D. Schiffer; C. Shyer and M. Klemens.
- 3 Against: none. The motion passed.
- 4 There was a Public Hearing for Special Permit Application 2015-0050, for a Home Occupation
- 5 per Section 210.2 for property located at 511 Lime Rock Road in Lakeville. The request is for a
- 6 Yoga Studio to be located in the basement of the home. N. Brusie reported that the application is
- 7 complete with all the necessary fees and approvals received. The maximum occupancy of the
- 8 studio is nine people. There is adequate off-street parking and two exits from the studio. A.
- 9 Cockerline moved to close the Public Hearing at 6:55. The motion was seconded by C.
- 10 Shyer and approved by all.
- 11 The motion was then made by A. Cockerline and seconded by C. Shyer to approve
- application 2015-0050 for a Home Occupation as meeting the Salisbury Zoning
- 13 Regulations, section 210-2. Roll call votes were as follows: For: A. Cockerline; M. Flint; D.
- 14 Schiffer; C. Shyer and M. Klemens. Against: none. The motion passed.
- 15 There was a brief recess, followed by continued deliberations concerning Proposed Amendments
- to Section 221 of the Salisbury Zoning Regulations. A verbatim transcript, the Proposed
- 17 Amendments and the Criteria for Decision are included as attachments to these Minutes.
- 18 A motion was then made by D. Schiffer and seconded by A. Cockerline to approve the
- 19 proposed amendments to Section 221 to the Salisbury Zoning Regulations and the
- 20 Statement of Facts and Findings. Roll Call votes were as follows: For: A. Cockerline; D.
- 21 Schiffer; C. Shyer and M. Klemens. Against: M. Flint. The motion carried, four to one.
- 22 A motion was made by A. Cockerline and seconded by C. Shyer to adjourn at 8:34.

24 Submitted by Garrett Richardson, 11/18/2015

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Approved: 12/7/2015

Salisbury Planning & Zoning

Petition to Amend Zoning Regulations

Section 221.1, Definition, Tables 205.2 and 205.3

The Salisbury Planning & Zoning Commission votes to approve the proposed amendments adding Section 221.1, et seq. (TRACK FOR RACING MOTOR VEHICLES), as amended, in lieu of the existing 221.2, and adding a definition of a "Motor Vehicle" to the definition section, and amending Tables 205.2 and 205.3, in accordance with the following findings and reasons:

- 1. The Amendments at Sections 221.1 and 221.3 set forth restrictions that are already part of the Town's zoning scheme. Setting forth the standards in the regulations themselves allows the affected property owners to know what the zoning restrictions are without having to review outside documents.
 - The parameters set forth in subsection 221.1.a are taken from the Amended Stipulated Judgment entered on March 21, 1988 in the civil action, Ann Adams, et al. v. B. Franklin Vaill, et al., CV No. 15,459 (Judicial District of Litchfield at Litchfield) (the "Vaill action"). This action is the "Court Order" incorporated at Section 221.2a of the existing regulations, and is the most recent order agreed to by the parties in that action. Since at least 1985, the zoning regulations have incorporated the restrictions contained in this court action.
 - The restrictions on camping set forth in section 221.3 are based on the stipulated judgment dated September 19, 1979 in <u>Lime Rock Foundation</u>, <u>Inc. v. Zoning Board of Appeals of the Town of Salisbury</u>, No. 16,4046 (Judicial District of Litchfield) (the "<u>ZBA</u> action"). That action arose out of a cease and desist order issued by the Zoning Enforcement Officer that was appealed to the Zoning Board of Appeals. The court judgment established the permissible limits of camping in light of the zoning regulations and the current race track's nonconforming status.
- 2. We recognize that the <u>Vaill</u> action has established parameters for the existing race track operations that have been in effect, in one form or other, since 1959, while the <u>ZBA</u> action has established the standards regarding camping use since 1979. Insofar as zoning attempts to be consistent with affected property owners' reasonable expectations concerning land use, it is reasonable to incorporate those restrictions on land use within the zoning regulations themselves. We nonetheless recognize that the <u>Vaill</u> action is based on private nuisance law, while the authority of the Planning & Zoning Commission derives from the delegated authority to regulate land use set forth by Chapter 124 of the General Statutes. We also recognize the Planning & Zoning Commission is not a party to

<u>Vaill</u> action and that the actual parties to the <u>Vaill</u> action may, or may not, be reflective of those property owners affected by the race track's use of the area.

By setting forth the most recent standards in the <u>Vaill</u> action and <u>ZBA</u> action in the regulations themselves, we clarify the exact standards that are the present "status quo" and that have shaped the conduct and reasonable expectation of affected property owners for decades. We also eliminate the possibility that the zoning regulations could be deemed to be amended if there were to be an amendment to a court judgment in the <u>Vaill</u> action.

At the same time, articulating the current restrictions within the regulations themselves provide a foundation where those expectations can, if appropriate, be changed -- specifically, by the permitting and amendment process set forth in the regulations. It may, in fact, be the case that conditions have changed so that modifications from the <u>Vaill</u> or <u>ZBA</u> standards may be warranted either in a more or less restrictive fashion, or both. We believe that utilization of the current permitting and amendment process, which requires notice and public hearings, will allow affected property owners the opportunity to make changes, where appropriate, apart from whether those changes do or do not coincide with what has been approved in private civil litigation.

- 3. The proposed amendments also clarify what uses should properly be deemed to be Accessory Uses to a Race Track, and what uses do not fall into that category. This has been a historical "gray area" over the years, and the regulations attempt to provide greater certainty so affected property owners will know in advance what is allowed and what is not allowed as an accessory use. Similarly, the addition of a definition of "Motor Vehicle" (taken from State statute) provides clarity as to what vehicles are covered by the regulations.
- 4. The proposed amendments also support public health & safety and preserve property values. While it has been alleged that the restrictions in the proposed Section 221.1a (which have existed in some form since at least 1985) are an unauthorized attempt to regulate noise, we disagree. Section 221.1a, as well as the remaining sections, comprise our efforts to regulate a particular use (a track for racing of motor vehicles), that, by its very nature, may have substantial impacts on surrounding properties. Those impacts include not only noise, but traffic (including volume, the size of vehicles travelling on narrow streets, and congestion), nighttime illumination, air quality, and changes to property values.
- 5. We find that it is appropriate to amend the table of uses to list a "track for racing motor vehicles" as permitted by Special Permit in the RE District. The current regulations do <u>not</u> list this as a use allowed in any district, and thus, the present regulations could reasonably be read as prohibiting this use. We recognize, however, that our regulations have permitted the racing of motor vehicles as a specially permitted use in the RE district in the past, and believe that the use was inadvertently omitted from the Table of Uses in the 2013 zoning revisions.

- 6. The Commission has made certain revisions to the proposed amendments in response to comments and testimony at the public hearing, which changes are within the scope of the advertised legal notice. Those revisions include adding a Section 221.5 (clarifying that the restrictions of the regulations and conditions of any special permit apply when any holder of a special permit leases all or part of its property to third parties), and Section 221.6. (A statement of the Commission's intent as to how the regulations should be interpreted if any part of Section 221.1 is found to be illegal; this has been inserted in light of claims that parts of the existing regulations and proposed amendments may be illegal.)
- 7. We find that the proposed amendments are consistent with the Town of Salisbury 2012 Plan of Conservation and Development for the reasons set forth by Mr. Martin Connor, AICP, in his oral and written testimony to the Commission.
- 8. The effective date of these amendments shall be December 1, 2015.

221.1 Track for Racing Motor Vehicles

A track for racing motor vehicles, excluding motorcycles, as well as for automotive education and research in safety and for performance testing of a scientific nature, private auto and motorcycle club events, car shows, and certain other events identified in section 221.2 are permitted subject to the issuance of a special permit in compliance with the procedures and standards of these regulations and also subject to the following:

- a. No motor vehicle races shall be conducted on any such track except in accordance with the following parameters:
- (1) All activity of mufflered or unmufflered racing cars upon the asphalt track or in the paddock areas shall be prohibited on Sundays.
- (2) Activity with mufflered racing car engines shall be permitted as follows:
 - A. On any weekday between 9:00 a.m. and 10:00 p.m. provided, however, that such activity may continue beyond the hour of 10:00 p.m. without limitation on not more than six (6) occasions during any one calendar year.
 - B. Permissible mufflers are those which meet the standards set forth in Section 14-80(c) of the General Statutes of Connecticut, Revision of 1959, or as the same may be amended from time to time.
- (3) Activity with unmufflered racing car engines shall be permitted as follows:
 - A. On Tuesday afternoon of each week between 12:00 noon and 6:00 p.m.
 - B. On Saturdays, not more than ten (10) in number in each calendar year, between the hours of 9:00 a.m. and 6:00 p.m.
 - C. On the ten (10) Fridays which precede the said ten (10) Saturdays between the hours of 10:00 a.m. and 6:00 p.m. for the purpose of testing, qualifying or performing such other activities as may be necessary or incidental to the direct preparation for races on the Saturdays specified, provided that no qualifying heats or races shall be permitted on such Fridays.
 - D. In such event the scheduled activity for any of the said ten (10) Saturdays must be rescheduled for a "rain date", then the said "rain date" and the Friday preceding it shall not be considered as one of the ten (10) days referred to in Paragraphs b) and c) above.

¹ The parameters set forth herein are identical to those set forth in the Amended Stipulation of Judgment entered by the Court, Dranginis, J., on March 21, 1988 in the civil action, <u>Ann Adams, et al. v. B. Franklin Vaill, et al.</u>, CV No. 15,459 (Judicial District of Litchfield at Litchfield), which parameters were previously incorporated by reference in the zoning regulations.

- E. On Memorial Day, Fourth of July and Labor Day between the hours of 9:00 a.m. and 6:00 p.m.
 - (i) In the event any of said holidays falls on a Tuesday, Thursday or a Friday, there may be unmufflered activity on the day preceding the holiday between the hours of 12:00 noon and 6:00 p.m., but in the event the permissible unmufflered activity of the Tuesday next preceding the holiday shall be forfeited.
 - (ii) In the event any of said holidays falls on a Sunday, the next day (Monday) will be considered the holiday for these purposes.
 - (iii) In no event shall any such holidays increase the number of Saturdays of permissible unmufflered activity beyond ten (10) as provided in Paragraph b) above.
- (4) Prohibited activity upon the track property shall include the revving or testing of mufflered or unmufflered car engines on Saturdays and permitted holidays prior to 9:00 a.m. and after 6:00 p.m., excepting the transportation of said vehicles to and from the paddock areas on or off their respective trailers, which transporting, unloading or loading shall not commence before 7:30 a.m. or extend beyond 7:30 p.m.
- (5) The use of the track loudspeakers before 8:00 a.m. and after 7:00 p.m. is prohibited.
- (6) A "racing car", for purposes of this subsection, is defined as any car entered in an event on an asphalt track.
- (7) Racing of motorcycles is prohibited. Nevertheless, specifically permitted are nonracing motorcycle activities including but not limited to demonstrations, instruction, timing, testing, practice and photography.
- (8) The parameters set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the parameters set forth above; and (2) a petition to amend the zoning regulations setting forth alternative parameters for this subsection.
- b. Where the land on which a race track is situated abuts or faces a residential zone district, there shall be a minimum of fifty foot buffer strips along each yard, or part thereof, so abutting or facing, which shall contain a screen of shrubbery not less than fifteen feet in width nor less than six feet in height within one year of the adoption of this amendment to

the regulations. This screen shall thereafter be suitably and neatly maintained by the owner, tenant and/or their agent. Any such screen shall consist of at least fifty percent evergreens so as to maintain a dense screen at all seasons of the year.

- c. The lot shall have adequate frontage on or access to a principal traffic street or street capable of handling the volume of traffic to be generated thereon. The access and service roads connecting with the principal traffic street or streets shall be so located and designed as to avoid unsafe traffic conditions or congestion. Traffic control devices and lighting of access points at or across street or access intersections shall be provided at the expense of the owner when required and provision shall be made for safe pedestrian traffic to, from and within the lot. The design and location of access and intersections with public highways shall be subject to the approval of the Selectmen for a town road or the Connecticut Department of Transportation for a state highway.
- d. Adequate off-street parking shall be provided to accommodate the vehicles of employees, proprietors, participants, customers, visitors and others.
- e. Not more than three signs, not more than 50 square feet each, advertising the use of the premises shall be permitted. Any sign not consistently visible from off the premises is permitted. Directional signs, not more than six square feet each, are permitted.
- f. No sign, with the exception of scoreboards, visible off the premises shall be illuminated by exposed tubes or other exposed light sources, nor shall any flashing sign be visible from off the premises. Spot or other lighting of any sign, building, structure, land track, parking space or any other part of the premises shall be so arranged that the light source is not visible from any point off the premises.
- 221.2 Accessory Uses to a track for racing motor vehicles may include; retail stores, professional or business offices, fire or emergency services, ATMs, restaurants, and food stands. Accessory uses may also include the use of the premises for automobile shows, sale of motor vehicles during racing events, sale of automotive parts and accessories; car washes, auto service and repairs; filling stations; commercial parking; laundry; equipment storage; racing schools and clubs; indoor theaters; and other similar activities that are accessory to the operation of a recreational race track herein permitted. Other accessory uses may include the production, showing, or performance of television, motion picture or radio programs with their related lighting and sound equipment.
- 221.3 Camping by spectators and participants is allowed as an accessory use to permissible automobile racing events subject to the following restrictions:
- a. All camping and camping vehicles shall be limited to locations within the infield of any asphalt race track existing as of the effective date of this regulation.

- b. No motor vehicles shall be parked in any Race Track outfield during the hours of 10:00 p.m. to 6:00 a.m. except those which are (1) on official track business; and (2) parked in the parking lot existing as of the effective date of this regulation.
- c. No traffic other than emergency or service vehicles shall be allowed between the hours of 11:00 pm and 6:00 am on any accessway into any race track that abuts property located at 52 White Hollow Road.
- d. The standards set forth in this subsection may be amended by the Commission upon filing and approval of (1) a special permit application in compliance with all requirements of these regulations, including a site plan identifying the location of all uses, accessory uses, buildings, structures, pavement, and all other improvements on the relevant property, and amendments to any of the restrictions set forth above; and (2) a petition to amend the zoning regulations setting forth alternative standards for this subsection.
- 221.4 The following uses are deemed not to be accessory uses to a track for racing motor vehicles but are allowed subject to a special permit: Fireworks displays (with the exception of a single evening display during the annual Independence Day period in early July for charitable purposes), concerts, flea markets, craft fairs, food shows, non-automotive trade shows, and garden shows.
- 221.5 If the holder of a special permit for a track for motor vehicle racing leases or otherwise authorizes a private organization to use all or part of its property to a third party, it shall require said party to comply with all provisions of these regulations, the special permit, and its conditions.
- 221.6 If any portion of this section 221.1 shall be found by a court of competent jurisdiction to be illegal, it is the intent of this Commission no part of Section 221.1 shall remain valid, including the amended table of uses adopted simultaneously herewith providing that a track for racing of motor vehicles shall be allowed by special permit in the RE District; it being the intent of the Commission that, if it is found that the Commission lacks authority to regulate any aspect of Race Track use as set forth herein, then a track for Racing of Motor Vehicles shall be found to not be permitted in the RE District, and any race track use in existence at the time of the adoption of these regulations shall have such rights as may exist as a nonconforming use under these regulations and Connecticut law.

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205.3 TABLE OF ACCESSORY USES

THESE ACCESSORY USES, BUILDING AND STRUCTURES ARE SUBJECT TO THE REQUIREMENTS OF SECTIONS 207 AND 208 AND ARE ALLOWED IN ALL ZONES UNLESS OTHERWISE STATED IN THE REGULATIONS

Faming, gardening, raising of crops or fruit and keeping of fam animals	No Parmit Required			
Renting of room and board	Zaning Pennil			
Hame office of convenience	No Permit Required			
Apartment on Single Family Residential Lot	See Section 208			
Keeping horses (max.3)	Zosky Pernii			
Fence over 8 feet height	Zoning Permit			
Family day care home	Zoning Permit			
Temporary special events	No Permit or Special Permit			
Excavation and grading	Special Parmit with exceptions as stated under Section on Exception and Grading ArLVI			
Signs	See Section on Signs			
Accessory buildings and structures	Zoning Petral of Sile Plan			
Dock	Zoning Parmit			
Construction alte trailer	Temperary Use Zoning Permit			
Single commercial vahicle max. 200 sq.ft footprint	No Pennii Required			
Mora than one commercial vehicle and/or commercial equipment atorage	Zoning Permit			
Wireless telecommunication entennae	She Plan			
Outdoor Woodburning Furnace	Sea Saction 208			
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Activities incidential/accessory to Lime Rock Park, see Section 221

Skilled nursing, essisted living, convelescent, continuing care retirement	Special Permit	Special Permit	Special Permit	Not Permitted		
205,2 TABLE OF USES- Ro	ural Enterp	rise; Con	ımerciai č	k Industria	l Zones	oage 3
	RE	C-20	CG-20	LI-1		
Camelery	Special Permit	Special Fermit	Special Parmit	Special Permit	_	
Commercial golf course	Special Pennit	Hot Permitted	Not Permitted	Not Pennitied		
Outdoor commercial uses; skaling tink, ski area, golf driving range, tennis court, beach, swimming and picnic areas	Special Parmit	Not Permitted	Not Familied	Not Permitted		
Golf course, cuidoor termis club or riding club sponsored by mon-profit organization	Special Permit	Not Pemiliad	Not Permitted	Not Permitted		
Indoor tennis, racquelball or aquesh facility	Sije Filan	. Site Pian	She Plan	Not Permitted		
Exercise or dance studio	Not Permitted	Site Plan	She Plan	Net Permitted		
Musical theater, Instruction, (Stage of Film)	Not Permitted	Site Plan	Site Plen	Not Permitted		
Track for Racing Alotor Vehrcles	Special Pernyl	Not Permitted	Not Permitted	Not Permitted		, ,
Emiliana - Sudania 6 - Au Alian-sa yerminda		-				
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(TRIAL COURT NO. LLI CV 15 6013033S, JUDICIAL DISTRICT OF LITCHFIELD)

LIME ROCK PARK, LLC : APPELLATE COURT

v. : STATE OF CONNECTICUT

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY, ET AL. : AUGUST 3, 2018

PETITION FOR CERTIFICATION OF INTERVENING DEFENDANT LIME ROCK CITIZENS COUNCIL

Pursuant to General Statutes § 8-8(o) and Practice Book §§ 81-1 *et seq.*, intervening defendant Lime Rock Citizens Council ("LRCC") hereby petitions this Court for certification to appeal from the Amended Memorandum of Decision ("MOD") of the Superior Court (the Hon. John D. Moore, J.) filed July 17, 2018.

- QUESTIONS PRESENTED FOR REVIEW.
- 1. Did the trial court err in holding that Lime Rock Race Track's stipulations in 1966 and 1988, in which it voluntarily accepted Superior Court injunctive orders entered in 1959 that banned auto racing at the Track on Sundays, and the Track's failure on several occasions to appeal to regulations reiterating the ban on Sunday racing, did not constitute a waiver by the Track of a claim, first made in 2015, that the Salisbury Planning and Zoning is preempted by state statute from banning Sunday racing through zoning regulation?
- 2. Did the trial court err in holding that General Statutes § 14-164a conflicts with and preempts a zoning regulation, adopted by the Salisbury Planning and Zoning Commission in 2015, that bans auto racing on Sundays at the Lime Rock Race Track?
- II. BASES FOR CERTIFICATION.

As to the First Question Presented, regarding waiver, the trial court decided a question of substance in a manner contrary to appellate precedent. In 1959, a Superior Court judge, deciding a private nuisance complaint brought by the Track's neighbors, issued orders that included a ban on Sunday racing. In 1966 and 1988, the Track

stipulated to modification of the 1959 orders – that is, it accepted them, including the Sunday racing ban. That acceptance was a matter of contract. Moreover, as a matter of settled appellate law, injunctions and stipulations regarding the use of land are *in rem*, run with the land, and are binding on and enforceable by successors in title. In 2015, however, the Track – while claiming in the still-running 1959 private nuisance case that it was in privity with its predecessors-in-title to the Track, in order to establish its standing to move to modify prior injunctive orders – took the position for the first time that General Statutes § 14-164a (whose roots go back to 1935) preempts local zoning regulation that purports to ban auto racing on Sundays after 12 noon. The trial court erroneously held that the stipulations agreed to in 1966 or 1988 were between the parties to the nuisance action at that time, and as agreements by a predecessor-in-title, do not bind the entity that now owns the Track. This holding is contrary to Connecticut appellate decisions.

The proposed Second Question Presented for Review, above, is a statewide issue, because the trial court has held that General Statutes § 14-164a prohibits every zoning commission in the state from banning automobile racing on Sundays after 12 noon. While there are four active auto race tracks in Connecticut (Salisbury, Stafford Springs, Waterford, Thompson), the trial court's ruling opens up opportunities for Sunday auto racing at venues where it does not presently occur due to municipal regulation, or even municipal silence, on the matter.

In addition, the Second Question arises from a holding regarding conflict preemption that is not in accord with prior appellate decisions. In summary, the trial court took incorrect approaches to statutory interpretation. First, it examined the text of § 146-164a and held that its meaning was clear and unambiguous; but it then resorted to one small piece of the statute's legislative history, and dismissed as irrelevant or insignificant evidence that the legislature has never intended to impose a uniform statewide rule prohibiting municipalities from banning automobile racing on Sundays after 12 noon. Next, after a textual analysis of § 14-164a based on punctuation, grammar, and syntax, the trial court dismissed as

irrelevant General Statutes § 8-13 (part of the zoning enforcement statutes); that section expressly allows zoning commissions to impose stricter "standards" on land use than state law. The trial court, however, erroneously held that regulation of days of auto racing – a limit on a physical use of land – is not a land use "standard." Lastly, the trial court upheld the defendant Commission's right to regulate auto racing, including the noise impacts of racing, under § 8-2, the Zoning Enabling Act, but then did not even discuss reconciling § 14-164a with §§ 8-2 and 8-13, thus bypassing a required – and in this case, dispositive – step in conflict preemption analysis, the consideration of overall statutory policies and purposes among related statutes.

III. SUMMARY OF FACTS MATERIAL TO THIS PETITION.

For nearly 60 years, the Lime Rock Race Track (the "Track") has conducted automobile racing on land in Salisbury, surrounded by a residential neighborhood known as Lime Rock, within limits first established in 1959 in a judgment entered by the Superior Court in a private nuisance action brought by neighboring homeowners and an abutting church and cemetery association. The 1959 injunction banned Sunday racing and imposed restrictions on hours and type of racing on other days. The neighborhood – today, more than 160 homes within 1.5 miles of the Track, in a bucolic, rural area – has relied on these limits and their corresponding protection of the quality of life, the right to quiet enjoyment, and property values. In fact, it has been the Track's relative compliance with the 1959 judgment, as well as stipulated modifications to that judgment entered in 1966 and 1988, that have led the Salisbury Planning and Zoning Commission ("PZC") historically to regulate the Track lightly, by merely incorporating the court orders by reference into Salisbury's Zoning Regulations instead of completely spelling out the restrictions, and by

not requiring the Track to obtain a special permit and site plan approval, even though the regulations for decades have classified the Track as a special permit use.¹

This long-established *status quo* came to an abrupt end in 2015 when Track owner Skip Barber initiated efforts to convert the Track from the regional, auto-club based operation that it has always been, to a facility capable of hosting multi-day unmufflered² racing events that would attract national auto racing associations – which would attract tens of thousands more spectators and campers, and generate much more noise, traffic, and environmental impacts than have ever previously descended on the Lime Rock neighborhood. This expansion would require races on Sundays and expanded racing hours on other days. In fact, in its briefs in this case, the Track argued that the Sunday racing ban should be eliminated because it put the Track at an "economic disadvantage" when trying to attract larger, national events.

In July 2015, the Salisbury PZC responded to the Track's expansion plans by proposing to amend the Zoning Regulations to make more explicit the limits on Track activities that previously had only been incorporated by reference to Superior Court records, orders and stipulations. The PZC's amendments *did not propose new substantive*

¹ More specifically, the chronology is: When the PZC first adopted a zoning ordinance in 1959, it included a Rural Enterprise ("RE") Zone, in which it placed the Track, and in which auto racing was a permitted use. The 1959 regulations stated that hours of racing must follow state law. Thus, as of 1959, the Superior Court, by order, had banned Sunday racing and limited racing hours on other days. In March 1966, the Track and its plaintiff neighbors entered into a stipulation, amending the 1959 court orders. This stipulation continued the Sunday racing prohibition and other restrictions. *That is, in 1966, the Track expressly agreed to abide by limits first ordered in 1959, including the ban on Sunday racing.* In January 1988, remaining parties to the 1959 case (plaintiff Lime Rock Protection Committee, Inc. and defendant Lime Rock Associates, Inc., then the Track owner) entered into an amended stipulation regarding motorcycle racing and "unmufflered" racing, and by agreement continued the prohibition on racing on Sundays.

² The Court should note that mufflered / unmufflered racing, as a regulation of noise from auto racing, is a vague and easily-evaded distinction. A muffler can be installed on a race car but then modified, such as by puncture holes, such that even a mufflered race car can emit nuisance-level noise.

restrictions, but only spelled out previously incorporated restrictions. The PZC's reasons for making the restrictions explicit were that (1) citizens should not need to search through files at the Litchfield Court House or PZC files to know what Salisbury's Zoning Regulations allow and prohibit; (2) regulation of the Track's land uses must be the responsibility of the Town of Salisbury, acting through its public agencies such as the PZC and ZBA, rather than the burden of private individuals acting to enforce court orders in noise nuisance litigation; and (3) changes in the Track's operations should originate as an application to the PZC or ZBA, where the proposal would be considered at a local public hearing, and where local agency action would be subject to review by this Court.

In response to the PZC's 2015 regulation amendment proposal, in September 2015, the Track launched a two-part effort: (1) it challenged the amendments at PZC hearings; and (2) it filed affirmative litigation,³ petitioning the Superior Court in Litchfield to terminate or modify the historically stipulated limits on Sunday racing and hours of racing on other days.⁴

The LRCC formed in 2015, as a successor to the original 1959 plaintiff group, to support the PZC's response to the Track's potential expansion. The Council's position, from its formation, has been that the Track may continue to operate in compliance with the

³ This Court may take judicial notice of the pleadings in *Adams v. Vaill*, No. LLI CV 58 0015459S (J.D. of Litchfield), and in particular the Track's September 2015 motions to modify the extant orders and stipulations. Defendant Franklin Vaill was the Track's owner in 1958. In response to these motions, Judge Moore, at the defendants' urging, directed the current Track owner, Lime Rock Park, LLC, to establish its privity with Mr. Vaill and all intervening record owners. The Track, on February 12, 2016, filed a Motion to Intervene, asserting that Lime Rock Park LLC is "in privity" with all prior owners, and thus entitled to move to modify existing orders in *Adams v. Vaill*. Judge Moore granted this motion on May 17, 2016.

⁴ During its expansion efforts, the Track has continually asserted that it only seeks "two Sundays" of racing, but this claim is based on the misleading, unenforceable distinction between "mufflered" and "unmufflered" racing, both of which are capable of generating nuisance noise, see n.2, supra. The Track seeks 20 Sundays of mufflered racing, and thus seeks Sunday racing throughout a nine month racing season.

limits established from 1959 to 1988; but the Council opposes the Track's expansion. As of the October 2015 hearings, the LRCC had more than 250 property owner members and 400 individuals who had expressed support for its position. The Council's members include Trinity Episcopal Church, established in the 1870's, which abuts the Track's north side; the Lime Rock Cemetery Improvement Association, which abuts the Track and the Church; and Music Mountain, a chamber music performance venue, established in the 1930's, that today records and broadcasts to a worldwide audience, on Sundays. The record of this appeal shows that although Music Mountain is, as the crow flies, about two miles from the Track, the Track is at a lower elevation and in what is topographically a bowl, with Music Mountain near the top of that bowl; automobile racing is therefore audible at Music Mountain. The Track's Sunday racing proposal would make it impossible for Music Mountain not only to record and broadcast music, but also to continue to operate as a music venue.

In July 2015, the PZC proposed the regulation amendments at issue in this appeal. After hearings, the amendments were adopted in November 2015. The Track appealed, and the Council moved to intervene, which Judge Moore granted. The trial court issued a decision in January 2018, which all parties moved to reargue. After reargument, the Court issued a revised MOD on July 17, 2018.

IV. AMENDED TRIAL COURT DECISION.

In its MOD (Appendix at A238), the trial court (1) affirmed the defendant Commission's authority under § 8-2 to regulate auto racing (A285-288); (2) affirmed all of the 2015 regulation amendments, including limits on days and hours of racing, excepting only the Sunday racing ban, as being within the Commission's authority (*id.*); (3) affirmed the Commission's regulation of and distinction between mufflered and unmufflered racing as permissible zoning regulation of noise sources (A313-322); (4) affirmed the Commission's right to require the Track to apply for and obtain a special permit and site plan approval as a condition of continued Track operations (A323-330); (5) held that the

invalidated Sunday racing ban was severable from the rest of the 2015 regulation amendments (A333-335); and (6) affirmed that its decision has no impact on the 1959 court orders, as modified, amended, and stipulated to in that litigation, including the ban on Sunday racing (A335).

The trial court denied the defendants' argument that the Track had long since waived any claim regarding the validity of a Sunday racing ban, and held that General Statutes § 14-164a preempted the Commission's regulation banning Sunday racing. As to LRCC's waiver claim (A289-293), the trial court noted several times (e.g., A248-249) that the parties to *Adams v. Vaill* had "stipulated" to restrictions on racing at the Track, most notably in 1966 and 1988. However, the Court held that these stipulations were between the parties at the time of the stipulation (A292). The court also asked, without ruling expressly, whether the current Track's 1966 and 1988 predecessors could bind the current plaintiff/Track owner from challenging the Sunday ban as reaffirmed in 2015 (A291).

As to conflict preemption (A299-313), the trial court first discussed whether General Statutes § 8-13 serves as a source of concurrent authority for the Commission to regulate days and hours of auto racing, notwithstanding § 14-164a. Section 8-13 allows zoning commissions to regulate the land use with "standards" more strictly than state law. The court held that regulating days and hours of racing are not a land use "standard" (A294-298). Second, after affirming the PZC's authority under § 8-2 to regulate auto racing, the court did not try to reconcile its affirmation of the PZC's authority under §§ 8-2 and 8-13 with its interpretation that § 14-164a prohibits zoning regulation that bans Sunday afternoon racing. Third, the court disagreed that § 14-164a is a prohibitory statute, as opposed to a grant to property owners like the Track of a right to conduct racing on Sunday afternoons, regardless of municipal bans on restrictions. Finally, the court engaged in a textual (and scholarly) analysis and held that its meaning was unambiguous, but then made one brief reference to the legislative history (A308-310), but in doing so ignored the fact that there is nothing in the lineage of the statute to indicate that a change in punctuation in

1998 was meant to reverse more than 70 years of statutory recognition of local control of Sunday racing.⁵ Thus, the trial court misread § 14-164a, and in any event should have validated the Salisbury PZC's Sunday racing ban as within the realm of its concurrent municipal authority under §§ 8-2 and 8-13.

V. THIS COURT SHOULD REVIEW THE TRIAL COURT RULINGS THAT GENERAL STATUTES § 16-164a PREEMPTS SALISBURY'S ZONING REGULATION BANNING SUNDAY RACING, AND THAT THE TRACK'S 1966 AND 1988 STIPULATIONS AND FAILURES TO APPEAL WERE NOT A WAIVER OF THE TRACK'S CHALLENGE TO THE 2015 ZONING REGULATION AMENDMENT THAT CLARIFIED THE LONGSTANDING SUNDAY RACING BAN.

Regarding waiver, first, the trial court decision misstates the legal effect of Lime Rock Park's predecessor stipulating, in 1966 and again in 1988, to the ban on Sunday racing. It is black-letter law that injunctions relating to the use of land in general, and injunctions issued in nuisance cases in particular, are *in rem* and run with the land. "[Nuisance] cases . . . treat injunctions . . . as in rem orders that bind nonparties with possessory rights to the property." *Commission of Env'l Protection v. Farricielli*, 307 Conn. 787, 805-15 (2013). Were this not so, the plaintiffs in the 1959 lawsuit would have needed to file a new action and obtain a new injunction each time the owner of the Track sold the property, which as the record shows has occurred several times since 1959.

Second, while a judgment is a court order, a stipulation to judgment is a contract. In Bonner v. City of New Haven, 2017 WL 6029567 at *3 (Super. Ct. Nov. 13, 2017) (A338), citing Solomon v. Keiser, 22 Conn. App. 424, 426-27 (1990), the Court summarized the law:

[The] Appellate Court [has] stated that . . . a stipulated judgment bears important distinctions from a judgment rendered following a trial of controverted facts. Instead of constituting a judicial determination of a litigated right, a stipulated judgment may

⁵ In fact, the trial court noted (A311, n.27) a 2004 amendment that removed the Motor Vehicle Commissioner as the state official who oversees racing at the local level, but then gave no significance to the fact that this amendment left governance of racing entirely in the hands of municipal officials.

be defined as a contract of the parties acknowledged in . . . court and ordered to be recorded by a court of competent jurisdiction . . .

See also Gillis v. Gillis, 214 Conn. 336, 339 (1990). The 1966 and 1988 stipulations in Adams v. Vaill are clearly "stipulations," not judgments after trial; they constitute the acceptance by Lime Rock Park's predecessors of the ban on Sunday racing. In other words, in 1966, Lime Rock Park converted the 1959 judgment to a contract, and reaffirmed its agreement again in 1988. In fact, the stipulations state on their face that in 1966 and 1988, the owner of the Track agreed to the ban on Sunday racing and limited hours on other days. The conversion of the 1959 judgment against it to a stipulation was a textbook waiver by Lime Rock Park's predecessor, a relinquishment of the right to challenge the 1959 injunction terms and raise defenses and objections to the 1959 orders.

In addition, as stated in n.3, *supra*, the Track has argued and the trial court agreed that the current plaintiff is in privity with its predecessors-in-title, and thus the Track cannot disclaim the 1966 or 1988 stipulations as *in personam* agreements by which it is not bound today.

Lastly, the Track on several occasions has waived its challenge by not appealing regulations incorporating or re-enacting the Sunday racing ban court orders. Failing to appeal may also be regarded as *res judicata* as to the legality of an amendment.

The decision below contains several contradictions and omissions that explain the erroneous result on conflict preemption. On the one hand, the decision confirms the Salisbury Zoning Commission's authority under General Statutes § 8-2 to adopt the 2015 regulation amendments. Such authority necessarily includes the power under § 8-2 to regulate when auto racing may occur. However, the decision then finds a conflict between the Commission's 2015 regulation banning Sunday racing and General Statutes § 14-164a as a prohibition on municipal limits on Sunday afternoon racing. In doing so, the decision finds a conflict even though it recognizes that the legislature, in § 8-2, has granted zoning commissions authority to regulate auto racing and hours and days of commercial

operations. Put another way, the decision fails to recognize the Commission's broader, concurrent § 8-2 authority with regard to racing, and thus fails to harmonize § 14-164a with § 8-2, a necessary step in preemption analysis.

This error is compounded by the decision's failure to properly regard § 8-13 in which the legislature has granted express authority to zoning commissions to regulate a land use more strictly than what is contained elsewhere in state statutes. The trial court holding that regulations governing days and hours of land use are not land use "standards" is simply untenable.

The decision is also inconsistent and erroneous with regard to other aspects of preemption analysis. The decision quotes *Bencivenga v. Milford*, 183 Conn. 168, 176 (1981) as directing that preemption analysis based on conflict "can only be determined by reviewing the policy and purposes behind the statute" However, the trial court's statutory interpretation focuses almost entirely on the grammar and punctuation of the statute, without considering the policies or purposes of §§ 14-164a, 8-2, or 8-13. The critical question in this regard is whether, by the 1998 change in punctuation in § 14-164a, the legislature intended a 180 degree reversal in state policy from the 1939 statute (which clearly granted local control) regarding municipal authority to regulate racing. The decision does not consider that the re-punctuation of the sentence in 1998 was not identified by any legislator, public official, or hearing witness as a solution to a problem or a change in state policy toward local control of auto racing. There is no legislative history to support the notion that the legislature intended a radical change in a longstanding policy. The decision does not discuss this necessary aspect of preemption analysis.

VI. CONCLUSION.

For these reasons, certification of an appeal should be granted.

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing Petition for Certification and Appendix were electronically mailed, this 3rd day of August, 2018 to the undersigned counsel. I hereby further certify that this Petition for Certification complies with all provisions of Practice Book §§ 81-2 and 62-7.

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LIME ROCK PARK, LLC : APPELLATE COURT

v. : STATE OF CONNECTICUT

PLANNING AND ZONING COMMISSION
OF THE TOWN OF SALISBURY ET AL

OF THE TOWN OF SALISBURY, ET AL. : AUGUST 3, 2018

PETITION FOR CERTIFICATION

Pursuant to Practice Book Section 81-1 and Conn. Gen. Stat. § 8-8(o), the defendant Planning & Zoning Commission of the Town of Salisbury ("Commission") petitions the Appellate Court for certification to appeal from the judgment of the Superior Court, Moore, J., sustaining, in part, the plaintiff's appeal from the Commission's decision to amend its zoning regulation concerning the regulation of motor vehicle racing.

QUESTIONS PRESENTED FOR REVIEW

- 1. Did the Trial Court err in concluding that the sentence in Gen. Stat. § 14-164a stating "Such race or exhibition may be conducted at any reasonable hour or any week day or after twelve o'clock noon on any Sunday" created a statewide right to Sunday racing that preempts any local zoning regulations to the contrary, notwithstanding the fact that the statute as a whole is prohibitory and regulatory in nature?
- 2. Did the trial court err in concluding that the phrase "no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances", which has existed unchanged in Gen. Stat. § 14-164a and its predecessor since 1939, does not grant local authorities the right to regulate race times because of changes in punctuation and the addition new language in a 1998 amendment to Gen. Stat. § 14-164a?
 - 3. Did the trial court err in its preemption analysis by failing to review the policies

and purposes of Gen. Stat. § 14-164a, including the legislative history of the 1998 amendments to the statute, and confining its opinion to a linguistic analysis of the text and punctuation of the first three sentences of the statute even though Supreme Court precedent mandates that the court undertake review of policies and procedure of the state and local statute when undertaking a preemption analysis and Supreme Court precedent also requires review of legislative history when the statute, when read in context, is susceptible to more than one reasonable interpretation?

4. Did the trial court err in concluding that the temporal standards for race times in Gen. Stat. § 14-164a preempted temporal standards in the Salisbury Zoning Regulations even though Gen. Stat. § 8-13 provides that "[I]f the regulations made under authority of the provisions of this chapter require a greater width or size of yards, courts or other open spaces or a lower height of building or a fewer number of stories or a greater percentage of lot area to be left unoccupied or impose other and higher standards than are required in any other statute, bylaw, ordinance or regulation, the provisions of the regulations made under the provisions of this chapter shall govern" (emphasis added)?

I. BASIS FOR CERTIFICATION

The Commission respectfully submits that certification of these issues should be granted because:

(A) The court below has decided questions of substance not in accord with decisions of the Supreme Court. In particular, its analysis of whether § 14-164a is prohibitory or permissive is not in accord with the analysis in Modern Cigarette v. Town of Orange, 256 Conn. 105 (2001); its failure to review policies and purposes of the underlying statute is not in accord with Modern Cigarette and other preemption cases; and the court failed to look beyond a "plain meaning" of the statute even though there was more than one

reasonable interpretation of its meaning.

- (B) The court has addressed questions of substance not heretofore addressed by the Appellate or Supreme Court. There are no Appellate or Supreme Court cases addressing Gen. Stat. § 14-164a, which has existed in some form since 1935. In addition, although a version of Gen. Stat. § 8-13 has been part of chapter 124 since its adoption, there are few cases that refer to it and no cases addressing the specific issue here, i.e., whether a municipal zoning regulation addressing a temporal (vs. spatial) standard prevails over a less restrictive state statute.
- (C) Questions of great statewide public importance are involved affecting all municipalities throughout the state. Under the court's interpretation, any municipal zoning regulations that do not allow motor vehicle racing from noon to midnight on Sundays are illegal because they violate Gen. Stat. § 14-164a. If the Salisbury Zoning Regulations, which allow racing on certain weekdays and some Saturdays, but not on Sundays, violates § 14-164a, then zoning regulations that do not allow racing at all also violate § 14-164a.

II. <u>SUMMARY OF THE CASE</u>

This is an appeal from a decision by the Commission to amend sections of its zoning regulations. In 2015, the Commission adopted amendments to both clarify and update its existing regulations addressing a "Track for Racing Motor Vehicles," a use allowed by special permit in the RE Zoning District. The plaintiff operates a race track in the district, and appealed the adoption of some of the amendments.

The court considered and rejected a number of arguments made by the plaintiff.

However, the court ruled that § 14-164a preempts the zoning regulations' restriction on

Sunday racing and that Gen. Stat. § 8-13 did not authorize a zoning commission to regulate race car driving more strictly than § 14-164a. Decision, pp. 56-75.

The court's conclusion as to preemption was based on a linguistic analysis of the first three sentences of § 14-164a. The court acknowledged that the phrase "provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances" had existed in the statute since the statute first addressed race times in 1939, and that up until 1998, this phrase provided authority for local authorities to regulate race times. It found, however, that in 1998, the legislature intended to divest local municipalities of the right to regulate race times by changing the punctuation adding additional language to the statute. See Decision, pp. 70-71. The court made no attempt to review the legislative history of the 1998 amendment but relied solely on the "plain meaning" of the language and punctuation.

The court referred to the test recited in <u>Modern Cigarette</u> and other cases, i.e., "[a] test frequently used to determine whether a conflict exists is whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes; if so, there is a conflict." It found that the legislature expressly authorized races after noon on Sunday, but the reference to racing "at any reasonable hour of any week day" reflected a legislative intent to allow local regulation of racing on weekdays. It rejected the claim by the Commission that § 14-164a was a prohibitory statute, and that the local regulation was simply more prohibitory, and therefore not in conflict with the state statute.

As to the claim that Gen. Stat. § 8-13 evinced a legislative intent to allow zoning regulations to adopt stricter regulations than those in state statutes, the court rejected the argument, finding that the race time restrictions in the regulations were not "standards" and that, under the doctrines of *ejusdem generis* and *noscitur a sociis*, § 8-13 intended to cover only spatial standards, such as setbacks and height, and not temporal restrictions.

Accordingly, the court sustained the plaintiff's appeal as to its claim that the zoning regulations prohibiting Sunday racing violated § 14-164a, but dismissed its other claims.

III. ARGUMENT

A. The court's preemption analysis is contrary to established precedent.

First, the court properly acknowledged that "[w]hether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives" Modern Cigarette, supra, 119; Decision, p. 61. Nevertheless, the court confined its analysis to a review of the statutory language and punctuation of § 14-164a and made no effort to examine the policies and purposes behind § 14-164a.

Accordingly, by reducing its preemption analysis to a "plain meaning" review of statutory language and punctuation, the court failed to properly apply the correct legal standard in its preemption analysis.

Second, the court's conclusion in its preemption analysis that the statutory language is permissive rather than prohibitive is contrary to the reasoning of the Supreme Court in Modern Cigarette, supra. In Modern Cigarette, the plaintiff claimed that it was a duly-licensed cigarette vending distributor that paid a \$1000 annual licensing fee. It claimed it was expressly authorized by statutes and state license to operate cigarette vending machines throughout the state. It claimed that the Orange ordinance, prohibiting cigarette vending machines, forbade what the state statute authorized. The Supreme Court rejected that argument and agreed with the town and the state that the statutory scheme was prohibitory, even though that statutory scheme allowed certain activities for those who obtained a license. The Court stated:

The regulatory scheme at issue in this case is prohibitory. In the absence of

chapter 214 of the General Statutes, in general, and § 12-288, in particular, the plaintiff could distribute tobacco products without any regulatory controls or state interference. The statutory provisions in chapter 214 do not expressly authorize vending machines, but, rather, they impose a series of limitations or prohibitions on the use of cigarette vending machines.

256 Conn. at 129 (footnote omitted).

The statutory scheme governing race tracks in § 14-164a is prohibitory in the same way that the statutory scheme governing cigarette vending machines in Chapter 214 is prohibitory. Neither law bestows rights or grants entitlements; both are regulatory and restrictive exercises of the police power. In each case, the local municipality went further than what was stated in the statutory scheme alone. But in each case, because of a separate grant of legislative authority to regulate in the area (here, the power to zone granted by the legislature to towns in Chapter 124), there is no irreconcilable conflict with state law simply because the local regulation goes further than the state statute.

The trial court interpreted the second sentence in § 14-164a as permissive instead of prohibitory because it states that races may occur after noon on Sundays. This sentence, read in light of the prohibitory nature of statute, simply means that racing before noon is prohibited. If this sentence was not intended as a prohibition of racing before noon, it would be unnecessary in the third sentence to set forth circumstances when the legislative body of a town could *allow* racing before noon. Indeed, subsection (b) of § 14-164a explicitly addresses race times in a prohibitory manner when it states "[n]o preliminary preparations or practice runs shall be performed before twelve o'clock noon on Sunday." A court must look "not only to the provision at issue, but to the broader statutory scheme to ensure the coherency of ... construction." <u>LaFrance v. Lodwell</u>, 322 Conn. 828, 837 (2016)(citation omitted).

Moreover, as stated in Sutherland, Statutes and Statutory Construction, Sec. 25.2

(updated October 2017): "Characterizing a statute as mandatory, directory, prohibitory or permissive is in reality the result of a determination as to what effect should be given to its provisions; and there is no essential, inherent, intrinsic, or constitutional difference in statutes whereby their character can be determined initially to understand their effect." This statement highlights the need, particularly in a preemption analysis, to look at more than language and punctuation, but also to policies and purposes of the statute. Doing so here confirms that Section 14-164a is a regulatory, restrictive, and prohibitive statute, and that the legislature here did *not* intend to create a universal right to Sunday racing everywhere in the state that trumps any local zoning regulations to the contrary.

Third, the court's preemption analysis ignored the principles set forth in recent preemption cases that "[w]hen the legislature intends for a statutory provision to apply exclusive both of other statutes, and of other types of law, it knows how to say as much."

Town of Rocky Hill v. SecureCare Realty, LLC, 315 Conn. 265, 296 (2015)(town zoning regulations not preempted by Gen. Stat. § 17b-372a giving state officials power to contract for nursing homes notwithstanding any provision in the general statutes). The regulation of motor vehicle racing can occur on both the state and local level, and nothing in § 14-164a states that the statute is the exclusive legal mechanism to regulate Sunday race times.

B. The court's construction of § 14-164a is not in accord with established precedent.

First, in its analysis of the phrase "no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances," the court ignored the fact that the phrase "such race or exhibition" is used multiple times in the statute, and each time appears to refer to *all* races and exhibitions covered by the statute. <u>See</u> Appendix at A-550. A standard tenet of statutory construction is that "[w]here the same words are

used in a statute two or more times they will ordinarily be given the same meaning in each instance." Willow Springs Condominium Association v. Sevent BRT Development Corp., 245 Conn. 1, 27 (1998). The context here suggests that each time the phrase is used, the phrase refers to *all* races and exhibitions covered by the statute.

Second, in its linguistic analysis, the court ignored case law providing that a dependent clause should refer to earlier provisions in the statute where the sense of the entire act so dictates. Bateson v. Weddle, 306 Conn 1, 17 (2012)("Strictly applying rules of English grammar to the sentence structure of § 10.3.D, the dependent clause modifies only the wetlands administrator and assistants positions. Nevertheless, we recognize that "[w]here the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the qualifying word or phrase will not be restricted to its immediate antecedent." ... Upon consideration of § 10.3.D of the town charter as a whole, we conclude that a construction limiting the application of the dependent clause to the last antecedent would be unreasonable.")

Third, although the court cited cases concerning the significance of punctuation, it ignored a significant body of case law disregarding specific punctuation when doing so appears to be mandated by the overall legislative intent. State v. Wassil, 233 Conn. 174, 195 (1995); Meads v. Burns, 199 Conn. 651, 658-59 (1986); Szarwak v. Warden.

Connecticut Correction Institution, 167 Conn. 10, 36 (1974); Grievance Committee v.

Dacey, 154 Conn. 129, 136-37 (1966); Kubis v. Town of Cornwall, 95 Conn. 720 (1921); Soares v. Max Services, Inc., 42 Conn. App. 147, 161 (1996); State v. Aspinall, 6 Conn. App. 546 (1986)("the statute must be examined 'with more than a grammarian's interest.").

Fourth, the court violated the rules of the statutory construction because, for the

reasons stated above, the text of § 14a-164a is ambiguous because it is subject to more than one reasonable interpretation, thus requiring resort to the legislative history, the legislative policy it was designed to implement, and other extratextual evidence.

Republican Party of Connecticut v. Merrill, 307 Conn. 470, 489-494 (2012); Gen. Stat. § 1-2z. The court, however, failed to refer to any part of the legislative history of the 1998 amendment to § 14-164a to support the contention that the legislature intended by this amendment to divest local municipalities of the right to regulate Sunday race times.

Connecticut has a strong and vociferous tradition of home rule, and it would be highly anomalous if the Legislature intended to remove municipal authority to regulate Sunday race times without some statement saying so in the statute or in the legislative history.

Fifth, the court's interpretation failed to recognize that § 14-164a and the Salisbury Zoning Regulations, while overlapping in some areas, can operate independently of each other in their respective areas of regulation. Section 14-164a applies to any individual public race event – regardless of where or how frequently the event occurs. The statute applies to one-time racing events that may occur at agricultural or seasonal fairs or at "monster truck" events at indoor arenas. The zoning regulation, in contrast, regulates a "track for racing motor vehicles" as a permanent land use. There could well be instances where a one-time racing event could occur that would be subject to the hours restrictions in § 14-164a but not be subject to a town's zoning regulations covering race tracks. In addition, § 14-164a is not limited to motor vehicle racing events but also covers "any ... demonstration of... skill with a motor vehicle as a public exhibition".

Sixth, the court's conclusions lead to bizarre results. Not only does its interpretation mean that, contrary to Connecticut's strong home rule policy, there is a statewide right to

race motor vehicles in every town in the state, that universal right is limited only to *Sunday* racing after noon. Towns remain free to regulate race times throughout the week (and the court found it legal for the Commission to limit Saturday race time to 10 events per year). It is difficult to contemplate any reason why the legislature would create an entitlement to race motor vehicles at all, and then limit it to Sundays between noon and midnight.

C. Gen. Stat. § 8-13 allows zoning regulations to adopt stricter temporal Standards than those in state statutes.

In finding that § 8-13 did not apply, the court found that the term "standard" refers only to physical standards. The Commission disagrees with the court's premise that regulation of days and hours of operation is not a physical land use standard, since regulation of times of a land use *is* a restriction on the physical use of land. Moreover, if the term "standard" does not encompass temporal limitations, the phrase "temporal standard" would be nonsensical or a misnomer, contrary to common usage. Compare Finan v. Finan, 287 Conn. 491, 505 & n. 9 (2008)(referencing "temporal standards" in a divorce case). Zoning regulations address both spatial and temporal elements of land uses. See, Francini v. Zoning Board of Appeals, 228 Conn. 785, 793-94 (1994)(upholding seasonal use restriction); City of New Haven v. G.L. Capasso, Inc., 151 Conn. App. 368, 371-72 (2014)(upholding an "hours of access" condition). Mallory v. West Hartford, 138 Conn. 497 (1952), cited by the court, simply did not address whether § 8-13 applied to temporal standards. The term "standard" in § 8-13 should encompass both spatial and temporal standards given that both are frequently components of zoning regulations.

IV. CONCLUSION

The Commission requests that this Court grant its petition for certification.

Dated: August 3, 2018

THE DEFENDANT,
PLANNING & ZONING COMMISSION OF
THE TOWN OF SALISBURY

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Certification was electronically mailed on this 3rd day of August 2018 to the following counsel of record. I hereby further certify that this Petition for Certification complies with all provisions of Practice Book §§ 81-2 and 62-7.

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(TRIAL COURT NO. LLI CV 15 6013033S, JUDICIAL DISTRICT OF LITCHFIELD)

LIME ROCK PARK, LLC

APPELLATE COURT

VS.

STATE OF CONNECTICUT

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

AUGUST 9, 2018

PETITION FOR CERTIFICATION

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE APPELLATE COURT:

The Plaintiff in the above-entitled matter, Lime Rock Park, LLC, represents that it is aggrieved by the Judgment of the Superior Court entered on July 17, 2018 and requests certification by the Appellate Court pursuant to Practice Book §§81-1 et seq.

Questions presented for review

- Whether the court below erred in failing to find that limitations on Saturday racing set forth in the Amended Regulations are barred by Connecticut General Statutes §14-164a.
- 2. Whether the court erred in limiting the preemptive effect of C.G.S. §14164a to racing activities on Sundays and in denying the Park's appeal as to the
 preemption of other restrictions on days and hours of racing contained in the Amended
 Regulations.
- 3. Whether the court erred in holding that the limitations on unmufflered racing set forth in the Amended Regulations are not subject to the mandatory approval provisions of Connecticut General Statute § 22a-73(c).
- 4. Whether the court erred in failing to find that the Commission exceeded its statutory authority by including in the Amended Regulations a requirement that the Park

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apply for and obtain a special permit as a pre-condition to any attempt to amend the new zoning regulations.

Basis for certification

- 1. The court below has decided questions of substance in a way probably not in accord with the applicable decisions of the Connecticut Supreme Court and Connecticut Appellate Court.
- 2. The decision is in conflict with other decisions of the court below and is in conflict with provisions contained in the Connecticut General Statutes.
 - Questions of grave public importance are involved.

Summary of the case¹

By complaint dated December 4, 2015 and filed with the court on December 8, 2015², Lime Rock Park, LLC (hereinafter sometimes referred to as the "Park") appealed from the Town of Salisbury Planning and Zoning Commission's adoption of amendments to its zoning regulations on various grounds including, *inter alia*, that the amendments violated state laws regarding racing activities and noise regulation, that the amendments failed to further any legitimate land use interest, and that the amendments violated the rights of the one entity they regulated, Lime Rock Park, LLC. Thereafter, the Commission appeared and answered, and the court granted the motion to intervene filed by Lime Rock Citizens Council, LLC ("Council"). The Commission then

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¹ The numerous pleadings and filings referenced below are contained in the Appendix filed herewith.

² The court's Amended Memorandum of Decision states that the appeal was filed on December 18, 2015. This appears to be a typographical error. See receipt stamp on the appeal (document number 1 in the Appendix) and the entries in the judicial website which show that the appeal was filed with the court on December 8, 2015.

filed the record; the parties filed their initial briefs; the Plaintiff filed its reply brief; and the court held a hearing on the matter on May 10, 2017, followed by another hearing on August 30, 2017. Thereafter, the court ordered supplemental briefing; the record was supplemented; and there was an additional hearing on October 10, 2017, during which time the record was further supplemented. On January 31, 2018, the court issued a Memorandum of Decision whereby the court sustained the appeal in part and denied it in part. Thereafter, each of the parties moved for reargument and/or reconsideration of various parts of the Decision, with supporting memoranda. The court ordered reargument, and the parties filed various objections and memoranda related to the issues raised. The court heard argument on the motions on March 19, 2018. The court then sought additional information regarding an amendment to the zoning regulations. On July 17, 2018, the court issued an Amended Memorandum of Decision. Thereafter, Lime Rock Park, LLC filed this petition for certification.

Argument

1. The court below erred in failing to find that limitations on Saturday racing are barred by Connecticut General Statutes §14-164a.

Connecticut General Statutes §14-164a provides in pertinent part:

No person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of this section.

Such race or exhibition may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday. The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances.

C.G.S §14-164a(a); emphasis added.

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In its initial Memorandum of Decision dated January 31, 2018 ("Mem. Dec."), the Court held that the provisions in the Amended Regulations that prohibited racing on Sundays and limited racing on Saturdays were violative of §14-164a of the Connecticut General Statutes. (Mem. Dec. p. 46.) In so doing, the Court necessarily determined that Saturday was a "week day" under §14-164a. This determination is consistent with the usage of the term when the Statute was initially enacted wherein the work week was generally six days long and Sundays were treated differently from the other days of the week. It is also consistent with early case law discussions which indicate that a "week day" was any day but Sunday. See e.g., Cadwell v. Connecticut Ry. and Lighting Co., 84 Conn. 450 (1911); Connecticut Spiritualist Camp-Meeting Association v. East Lyme, 54 Conn. 152 (1886).

In its Amended Memorandum of Decision dated July 17, 2018 ("Am. Mem. Dec."), the court reiterated that "by its plain language, General Statutes §14-164a(a) allows a race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition to be conducted at any reasonable hour of any week day or after twelve o'clock noon on Sunday," (Am. Mem. Dec. p. 67), and stated "[t]his court is constrained to read the statute as written, and, as dictated by its punctuation, structure and grammar, General Statutes § 14-164a(a) does not allow a local legislative body to limit the days and times of racing, other than to allow racing before noon on Sunday on the condition that such earlier racing time complies with local ordinances." (Am. Mem. Dec. p. 68; emphasis added). Notwithstanding its statement that §14-164a does not allow a legislative body to limit the times and days for racing other than on Sunday, the court concluded by "sustain[ing] the Park's appeal as to (1)

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the provisions of the amendments prohibiting Sunday racing after noon in contravention of the permission granted in General Statutes §14-164. The court denies all other aspects of the Park's appeal...." (Am. Mem. Dec. p. 97).

The Plaintiff respectfully asserts that the court was correct when it found that the provisions in the Amended Regulations that prohibited racing on Sundays and limited racing on Saturdays were violative of §14-164a (Mem. Dec. p. 46), and that the court erred when it revised its findings via the Amended Memorandum of Decision to allow limitations on Saturday racing. The Plaintiff respectfully asserts that if the regulations at issue prohibit racing on all but ten Saturdays, such a prohibition would be contrary to the court's own analysis of what the statute allows and disallows.³

Contrary to the court's finding, mufflered racing is allowed on all Saturdays under §221.1(a)(2), as that regulation has been interpreted by the Commission. Indeed, the regulations have always allowed mufflered racing on Saturdays: as the court noted in its Amended Memorandum of Decision, the injunction ruling that formed the basis for the regulations for decades included language whereby Judge Shea noted the restrictions on Sundays but stated "the track could be operated on every other day of the week." (See citation to language in Judge Shea's decision on p. 8 of Amended Memorandum of Decision.)

Further, if Saturdays were not included in the "weekday" language of §221.1(a)(2) regarding <u>mufflered</u> racing, the Commission would not have needed to include the language in §221.1(a)(4) limiting pre-nine o'clock and post-ten o'clock engine activity on both mufflered and unmufflered racing on Saturdays.

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³ Petitioner respectfully suggests that the court below misinterpreted the Amended Zoning Regulations as to when Saturday racing is allowed. The relevant section of the Regulations, 221.1 (a), includes four subparts: §221.1(a)(1) prohibits all mufflered and unmufflered racing activity on Sundays; §221.1(a)(2) sets forth the times that <u>mufflered</u> racing is allowed on "weekdays"; §221.1(a)(3) sets forth the times that <u>unmufflered</u> racing is allowed, including the provision allowing ten unmufflered Saturdays; and §221.1(a)(4) sets forth rules regarding when <u>mufflered</u> and <u>unmufflered</u> engine testing activities can start on Saturdays and other days.

2. The court erred in limiting the preemptive effect of C.G.S. §14-164a to racing activities on Sundays and in denying the Park's appeal as to the preemption of other restrictions on days and hours of racing.

As noted above, §14-164a provides in pertinent part that racing activities "may be conducted at any reasonable hour of any week day or after twelve o'clock noon on any Sunday." In its initial Memorandum of Decision, the court found that the provisions in the Amended Regulations that prohibited Sunday racing after noon and restricted racing on other days of the week irreconcilably conflicted with and therefore were preempted by §14-164a, citing inter alia, Bauer v. Waste Management of Connecticut, Inc., 234 Conn. 221 (1995). (Mem. Dec. p.36-37). In its Amended Memorandum of Decision, the court again found that the prohibition on Sunday racing was preempted by §14-164a. but changed its earlier ruling regarding restrictions on other days of the week, stating that it "denie[d] the Park's appeal as to preemption of other restrictions on days and hours of racing." (Am. Mem. Dec. p. 75; emphasis added), While the court stated that it continued to follow the "prohibit versus permit" preemption analysis of Bauer, its conclusion is contrary to Bauer which holds that regulations that "prohibit what the statute authorizes" conflict and are preempted. The fact that the Commission can determine which hours are reasonable on a particular day should not be construed to negate the fact that §14-164a permits racing every day.

3. The court erred in holding that the limitations on unmufflered racing set forth in the Amended Regulations are not subject to the mandatory approval provisions of Connecticut General Statutes § 22a-73(c).

The court found that the regulations relating to when "unmufflered" versus "mufflered" racing was allowed were noise regulations (Am. Mem. Dec. p. 78), but stated that they did not constitute regulation of noise pollution similar to the regulation of

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noise found in Berlin Batting Cages, Inc. v. Planning and Zoning Commission, 76 Conn. App. 199 (2003), and therefore did not require preapproval by the Commissioner of DEEP under the Noise Control Act. In so doing, the court distinguished the noise pollution at issue in Berlin Batting Cages where the noise arose from electric-powered go-cart racing, finding that the amendments at issue "which restrict noise from car engines arising from entertainment events, i.e., a motor vehicle race, are much more similar to limitations at issue in Husti [v. Zuckerman Property Enterprises, Ltd, 199 Conn. 575 (1986)] that restricted noise, under § 8-2, from entertainment events, namely, outdoor concerts in a residential area." (Am. Mem. Dec. p. 84.) This distinction is contrary to the language in Connecticut General Statutes § 22a-73 which refers broadly to "noise control ordinance[s]" and noise standards. Further, the Park respectfully asserts that, contrary to the court's statement, the noise regulations at issue in this case, which relate to noise from car engines during motor vehicle races, are more akin to the issues raised in Berlin Batting Cages, where the noise arose from electricpowered go-carts, than they are to the noise restrictions in Husti, which dealt with outdoor concerts at a country club. Further, the Husti case does not cite to, much less analyze, the statutory scheme behind § 22a-73 or Chapter 442 of the Statutes. As such, the Park asserts that Berlin Batters Cages is the controlling case law, and the court's decision is contrary to the controlling case.

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⁴ As the Park advised in its Supplemental Brief dated September 11, 2017, the Commission's arguments regarding its authorization to regulate noise was also contrary to MSW Associates LLC v. Planning Commission of Danbury, 2014 WL 4637476, DBD-CV08-4008817-S.

4. The court erred in failing to find that the Commission exceeded its statutory authority by including in the Amended Regulations a requirement that the Park apply for and obtain a special permit as a pre-condition to any attempt to amend the new zoning regulations.

In its initial Memorandum of Decision, the court sustained the Park's appeal challenging the provisions in the Amended Regulations that required the Park to obtain a special permit prior to seeking a change in the regulations. (Mem. Dec. p.46.) This ruling is consistent with Connecticut General Statutes §8-3(c), which only requires that a petition be filed. Further, while § 8-3(c) allows a commission to dictate the form of the petition, it does not authorize a commission to dictate who can file the petition.

The court then reversed this decision in its Amended Memorandum of Decision. The court reviewed the admittedly very complicated history⁵ of the Park in Salisbury, including the fact that the Park predated the enactment of zoning regulations and therefore its operation was a preexisting non-conforming use, (Am. Mem. Dec. p.88), and that when zoning regulations were first enacted, the Park was a permitted use. Based on the language in the Court's Amended Memorandum of Decision, it appears that the main reason for the change in the ruling was that the Court was troubled by the complicated history and the fact that the Park did not have a special permit.⁶ The court

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⁵ The court devoted many pages to its review of the history of the Park. See, e.g. Am. Mem. Dec. pp. 4-25 for the court's initial summary. Thereafter, the court made many references to the history as it set out its reasons for changing the findings and conclusions contained in the initial Memorandum of Decision. See, e.g. Am. Mem. Dec pp. 87-93.

⁶ The court noted that "a significant amount of chaos has arisen concerning the regulation of the race track at the Site in the past sixty years" and attributed this "confusion, inconsistency and imprecision" to several sources that are attributable to the Commission, including sloppiness whereby through a scrivener's error (which the Commission admits), the Park was inadvertently omitted from the lists of special permitted uses in several versions of the regulations. See discussion at Am. Mem. Dec.

did cite *Zimnoch v. Planning & Zoning Com'n*, 302 Conn. 535 (2011) in support of its new conclusion. However, *Zimnoch* and the cases it cites only approve of a regulation requiring an application for a zone change and an application for a special permit to be combined into one process. Plaintiff respectfully asserts that the *Zimmoch* case is inapplicable here, given that the manner in which the Park operated before the regulations were enacted in 1959 is "a preexisting, nonconforming use" and thereafter the Park operated as a permitted use. (Am. Mem. Dec. p.88). Further, leaving aside the accuracy or inaccuracy of the court's statements regarding the Park's status, such status is utterly irrelevant to whether or not someone can petition the court for an amendment to the Regulations under 8-3(c). The Park respectfully asserts the Commission cannot use regulatory language to undercut the rights afforded to all under 8-3(c).

An Appendix is filed herewith.

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pp. 48-49. The Park asserts that problems caused by others, including the Commission, should not serve to undercut the Park's rights, including any "grandfathered" rights and should not be used to justify limiting the Park's rights under § 8-3(c).

That the court used the complicated history of the Park in determining whether a special permit would be required before the Park could seek an amendment is especially troubling for several reasons. First, as the court itself recognized, the "significant chaos" regarding the regulation of the Park arose in large part due to the actions of others. Second, as set forth in Lime Rock's initial brief to the court, after the appeal was filed, the Commission held a public hearing on a post-appeal request by the intervening defendant Council that the Commission establish a deadline by which time the Park must submit a special permit and site plan application. After a public hearing, the Commission declined to grant the requested relief, determining instead that "we [the Commission] will not require Lime Rock to apply for a special permit for track activities at this time." See brief of plaintiff Lime Rock Park dated September 15, 2016, p. 24, footnote 24.

Dated at Waterbury, Connecticut, this 9th day of August, 2018.

The undersigned certifies that the documents filed herewith contain no personally identifying information that is prohibited from disclosure by rule, court order, statute or case law and that the documents comply with the applicable rules of appellate procedure.

THE PLAINTIFF-PETITIONER, LIME ROCK PARK, LLC

BY:

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Richard L. Street

FOR: Carmody Torrance Sandak & Hennessey, LLP

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P. O. Box 1110

Waterbury, CT 06721-1110

Juris No. 008512

Its Attorneys

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APPEAL JD-SC-33 Rev.	· · ·	CROSS A	APPEAL	PPEAL X	CORRECTED FORM		
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• • • • • • • • • • • • • • • • • • • •	matter (If a writ of error, the writ and the sign		rn must be filed on the same busine	ss day as this form. See Prac	tice Book Section 72-3.)		
Appear arter	Certification by the Appellate Co	Trial court location	00				
	Court		eet, Torrington, CT 06790				
	Trial court judges being appealed	100 11010	List all trial court docket numbers	, including location prefixes			
	Hon. John D. Moore		LLI CV 15 6013033S				
	All other trial court judges who were involved	ed with the case	Judgment for (Where there are m	ultiple parties, specify those for	or whom iudoment was rendered)		
Trial			Lime Rock Park, LLC (in	part)	,		
Court	ŧ		Planning and Zoning Co		n of Salisbury (in part)		
History	Date of judgment(s) or decision(s) being a	pagelod	Lime Rock Citizens Cou		e for filing appeal extended to		
	07/17/2018	ppealeu	Date of issuance of notice on any order on any motion that would	Date	s for iming appear extended to		
	Case type		render judgment ineffective For Juvenile Cases	· .			
	Civil	•	Termination of Parental F	lights Order of Te	mporary Custody		
	For Civil/Family Case Types, Major/Minor	code:	1				
	A00		Other				
	Appeal filed by (Party name(s))		, ,				
	Lime Rock Citizens Council, LI						
	From (the action that constitutes the appear Trial court Memorandum of De	elable judgment or cision dated	decision) July 17. 2018				
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	By (Signature of coursel of record)	, /	Telephone number	Fax number	Juris number (If applicable)		
	> mustly I foll	ve	(860) 251-5000	(860) 251-5318	304582		
	Type name and address of counsel of reco (This is your appearance; see Practice Boo		ate matter	E-mail address thollister@g	goodwin.com		
	Timothy S. Hollister, Esq.						
	Shipman & Goodwin LLP, One C	9 .					
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Required Documents	 Preliminary Statement of the Issue Court Reporter's Acknowledgment 		Statement for Preargument Conference (form JD-SC-28A) Constitutionality Notice				
Documents	that no transcript is necessary		6. Sealing Order form, if any				
	3. Docketing Statement				Court Use Only		
Entry Fee F	Paid No Fees Required	Fees. Costs. an	d Security waived by Judge (er	iter Judge's name below)	Date and time filed		
	_ ' -						
Judge			Date waived		·		

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CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 63-4, I hereby certify that this Corrected Appeal Form complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy has been served electronically on the undersigned counsel, this 27th day of September, 2018.

John L. Cordani, Jr., Esq. <u>ilcordani@carmodylaw.com</u>
Richard L. Street, Esq. <u>rstreet@carmodylaw.com</u>
Carmody Torrance Sandak & Hennessey LLP
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New Haven, CT 06509-1950
Tel.: (203) 777-5501
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Juris No. 008512

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Timothy S. Hollister

Commissioner of the Superior Court



STATE OF CONNECTICUT

SUPREME COURT APPELLATE COURT

CAROLYN C. ZIOGAS CHIEF CLERK 231 CAPITOL AVENUE HARTFORD, CT 06106

SUSAN C. REEVE DEPUTY CHIEF CLERK

TEL. (860) 757-2200

September 27, 2018

Dear Counsel of Record:

The attached appeal filed September 27, 2018, has been assigned docket number A.C. 42158 <u>Lime Rock Park, LLC v. Planning & Zoning Commission of the Town of Salisbury.</u>

The clerk assigned to this appeal is Attorney Cory M. Daige. He may be reached at (860)757-2149. Please note that clerks are not permitted to give legal advice.

The appellate clerk's office will be open from 8:30 a.m. until 5 p.m. on weekdays, with the exception of legal holidays and closures for exigent circumstances, such as inclement weather. The window at the appellate clerk's office will be open from 8:30 a.m. until 4:30 p.m. For information regarding when electronic documents are deemed filed, please see Practice Book § 63-2. For holiday and inclement weather questions, self-help publications and videos, and forms related to the appellate process, please consult the Judicial Branch website at www.jud.ct.gov.

You may now subscribe to e-mail updates for Supreme and Appellate Court Cases. To subscribe, please click on the link in the appeal case information section of your case detail web page. Please note that you will receive an email notification only if activity has occurred in your case. You will stop receiving updates if the case becomes sealed or protected pursuant to a court order or statute.

Most civil and family cases will be assigned for a pre-argument conference (See Practice Book § 63-10). If your case is eligible, you will be notified by letter of the date and location of the conference. Attendance at the PAC conference is mandatory and information regarding the pre-argument conference program including a video and the "Pre-Argument Conference Handbook" is available at www.jud.ct.gov/Publications/videos/PAC.htm.

Very truly yours,

/s/ Carolyn C. Ziogas

L. Jeanne Dullea Assistant Clerk 860-757-2144 Carl D. Cicchetti Assistant Clerk 860-757-2223 Rene L. Robertson Assistant Clerk 860-757-2229 Luke P. Matyi Assistant Clerk 860-757-2249

Cory M. Daige Assistant Clerk 860-757-2149 Maurilio Amorim Assistant Clerk 860-757-2242

Chief Clerk

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	All other that court judges who were involved with the case		Judgment for (Where there a	re multiple pari	ies, specify those fo	or whom judgment was rendered)
Trial Court			LIME ROCK PARK, I	LC .		
History			Continued			
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	Appeal filed by (Party name(s))					
	PLANNING AND ZONING COMMISSION			SURY		
	From (the action that constitutes the appealable judgm		•			J. 2010
	Final Judgment sustaining in part Plain	uit S 2	coning Appeal - Amer	idea Decisi	on dated July	17, 2018
Appeal	If this appeal is taken by the State of Connecticut, provi	ide the i	name of the judge who grante	d permission to	appeal and the dat	e of the order
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	Statutory Basis for Appeal to Supreme Court					
	By (Signature of counset of record)		Telephone number	Fax num	per	Juris number (If applicable)
	▶ 302440		203-331-7138			302440
	Type name and address of counsel of record filing this (This is your appearance; see Practice Book Section 62		e matter		E-mail address	
	LECLAIRRYAN A PROFESSIONAL CORF	•	richard.bowerman@leclairrya			erman@leclairryan.
	9TH FLOOR NEW HAVEN CT 06511	 .	RATION 545 LONG WHARF DRIVE com			*
Appearance	"X" one if applicable				<u>.l</u>	
	Counsel or self-represented party who files to	his app	eal will be deemed to hav	e appeared i	n addition to cou	nsel of record who
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	where the copy was delivered.	_ ▶	302440	<u> </u>		10/02/2018
	To be filed with the Appellate Clerk within ten day 1, Preliminary Statement of the Issues	s of the	e filing of the appeal, if ap	plicable. See	Practice Book Se	ction 63-4.
Required Documents	Court Reporter's Acknowledgment or Certificat		Statement for Preargume Constitutionality Notice	nt Conterence	(lotti 10-50-28	A) .
	that no transcript is necessary 3. Docketing Statement	6.	Sealing Order form, if any			
						Court Use Only
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Appeal Form (continued)

CASE NAME:
LIME ROCK PARK, LLC v. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALT

Parties & Appearances

PARTY/PARTIES INITIATING THE APPEAL

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY - Judgment For Juris: 428872 LECLAIRRYAN A PROFESSIONAL CORPORATION 545 LONG WHARF DRIVE 9TH FLOOR NEW HAVEN, CT 06511 Phone: (203) 331-7138 Fax Email: r.chard bowerman@teclairryan.com

ALL OTHER PARTIES AND APPEARANCES

LIME ROCK PARK, LLC - Judgment For
Juris: 008512 CARMODY TORRANCE SANDAK & HENNESSEY LLP
P0 BOX 1110
WATERBURY, CT 06721
Phone: (203) 573-1200 Fax:
Ema1: clee@carmodylaw com

LIME ROCK CITIZENS COUNCIL, LLC - Judgment For Juris: 057385 SHIPMAN & GOODWIN LLP ONE CONSTITUTION PLAZA HARTFORD, CT 06103 Phone: (860) 251-5047 Fax. (860) 251-5216 Emait TDAVIDSON@GOODWIN COM



STATE OF CONNECTICUT

SUPREME COURT APPELLATE COURT

CAROLYN C. ZIOGAS CHIEF CLERK

231 CAPITOL AVENUE HARTFORD, CT 06106

SUSAN C. REEVE DEPUTY CHIEF CLERK

TEL. (860) 757-2200

October 2, 2018

Dear Counsel of Record:

The attached appeal filed 10/02/2018, has been assigned docket number A.C. 42171 LIME ROCK PARK, LLC v. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI

The clerk assigned to this appeal is Attorney Cory Daige. He may be reached at (860)757-2149. Please note that clerks are not permitted to give legal advice.

The appellate clerk's office will be open from 8:30 a.m. until 5 p.m. on weekdays, with the exception of legal holidays and closures for exigent circumstances, such as inclement weather. The window at the appellate clerk's office will be open from 8:30 a.m. until 4:30 p.m. For information regarding when electronic documents are deemed filed, please see Practice Book § 63-2. For holiday and inclement weather questions, self-help publications and videos, and forms related to the appellate process, please consult the Judicial Branch website at www.jud.ct.gov.

You may now subscribe to e-mail updates for Supreme and Appellate Court Cases. To subscribe, please click on the link in the appeal case information section of your case detail web page. Please note that you will receive an email notification only if activity has occurred in your case. You will stop receiving updates if the case becomes sealed or protected pursuant to a court order or statute.

Most civil and family cases will be assigned for a pre-argument conference (See Practice Book § 63-10). If your case is eligible, you will be notified by letter of the date and location of the conference. Attendance at the PAC conference is mandatory and information regarding the pre-argument conference program including a video and the "Pre-Argument Conference Handbook" is available at www.jud.ct.gov/Publications/videos/PAC.htm.

Very truly yours,

Carolyn C. Ziogas Chief Clerk

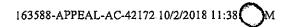
L. Jeanne Dullea Assistant Clerk 860-757-2144 Carl D. Cicchetti Assistant Clerk 860-757-2223 Rene L. Robertson Assistant Clerk 860-757-2229 Luke P. Matyi Assistant Clerk 860-757-2249

Cory M. Daige Assistant Clerk 860-757-2149 Maurilio Amorim Assistant Clerk 860-757-2242

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	31-301b, 51-197f, 52-470	•	electronic filing ha	is been granted	or you are	e an incarcerate	ed self-represented party. For	
To Supr	reme Court X To Appellate Cou	urt ¹	further information	n about e-filing c	or this form	i, see the Appe	eal Instructions, form JD-SC-34	
Name of case (State full name of case)							
	(PARK, LLC v. PLANNING AND ZO						·	
Type of appellat	e matter (If a writ of error, the writ and the signe	d marshal's rei	um must be filed on	the same busines	s day as th	is form. See Pra	ctice Book Section 72-3.)	
Appeal								
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	For Civil/Family Case Types, Major/Minor co	de:	_		•			
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	Appeal filed by (Party name(s))	·				÷		
		LIME ROCK PARK, LLC						
	From (the action that constitutes the appealable judgment or decision)							
•	Memorandum of Decision dated July 17, 2018							
Appeal	If this appeal is taken by the State of Connec	ticut, provide ti	ne name of the judg	e who granted per	mission to a	appeal and the da	ate of the order	
	Statutory Basis for Appeal to Supreme Cour						· · · · · · · · · · · · · · · · · · ·	
-	By (Signature of counsel of record)		Telephone ni		Fax numb		Lude a select Man Politica	
	▶ 301031		203-573-1		Paxilullic	iei	Juris number (If applicable)	
	Type name and address of counsel of record			1200	i	E-mail address		
	(This is your appearance; see Practice Book	clee@carr			nodylaw.com			
	CARMODY TORRANCE SANDAK	SSEY LLP PO BOX 1110			7 :			
Annogrango	WATERBURY CT 06721							
Appearance	"X" one if applicable							
	Counsel or self-represented party who files this appeal will be deemed to have appeared in appeared in the trial court.					n addition to counsel of record who		
	Counsel or self-represented party who files this		Name of counsel of record			Juris number (If applicable)		
	appeal is appearing in place of:			,				
	I certify that a copy of the appeal form I am fliing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone numbers; the appeal form has been redacted or does not contain any names or other							
	personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complie all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.						the appeal form complies with	
	all applicable rules of appellate procedu Date to be delivered 10/02/201							
Certification	If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, and telephone number of each counsel of record and the address		If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered					
							iles State's Attorney	
			Signed (Counsel of record)			Date signed		
	where the copy was delivered.	ic dourcas	▶ 301031				10/02/2018	
	To be filed with the Appellate Clerk with	n ten days of						
Required Documents	Preliminary Statement of the Issues Statement for Preargument Conference (form JD-SC-28A) Court Reporter's Acknowledgment or Certificate Constitutionality Notice						(8A)	
pocaments	that no transcript is necessary 3. Docketing Statement		6. Sealing Order					
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Judge			Date waived		•	-		
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	- al Sabrarda we dishive.				EEE	-3-5(414OH 188)		



Appeal Form (continued)

CASE NAME:
LIME ROCK PARK, LLC v. PLANNING AND ZONING COMMISSION OF THE TOWN OF SALI

Parties & Appearances

PARTY/PARTIES INITIATING THE APPEAL

LIME ROCK PARK, LLC - Judgment For
Juris: 008512 CARMODY TORRANCE SANDAK & HENNESSEY LLP
PO BOX 1110
WATERBURY, CT 06721
Phone: (203) 573-1200 Fax:
Email: clee@carmodylaw.com

ALL OTHER PARTIES AND APPEARANCES

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY - Judgment For Juris: 428872 LECLAIRRYAN A PROFESSIONAL CORPORATION 545 LONG WHARF DRIVE 9TH FLOOR NEW HAVEN, CT 06511 Phone: (203) 331-7138 Fax: Email: richard.bowerman@leclairryan.com

LIME ROCK CITIZENS COUNCIL, LLC - Judgment For Juris: 057385 SHIPMAN & GOODWIN LLP ONE CONSTITUTION PLAZA HARTFORD, CT 06103 Phone: (860) 251-5047 Fax: (860) 251-5216 Email: TDAVIDSON@GOODWIN,COM

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APPEAI		CROSS	APPEAL	DED APPEAL	X CORRECTED FORM	
P.B. Sections 3-	. 11-17 8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10, 73 31-301b, 51-197f, 52-470	ei	lectronic filing has been grante	ed or you are an incarc	nption from the requirements of erated self-represented party. For	
To Supre	eme Court X To Appellate Co	ourt fu	ırther information about e-filing	or this form, see the A	Appeal Instructions, form JD-SC-34.	
•	tate full name of case)	Canadada	of the Town of Callabur	· · · · · · · · · · · · · · · · · · ·		
	Park, LLC v. Planning and Zoning matter (if a writ of error, the writ and the sign				Practice Book Section 72-3)	
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Trial Court History	Tried to	Trial court locati				
	Court 50 Field Street Trial court judges being appealed		eet, Torrington, CT 06790 List all trial court docket numbers, including location prefixes			
	Hon. John D. Moore		LLI CV 15 6013033S			
	All other trial court judges who were involved with the case		Judgment for (Where there are multiple parties, specify those for whom judgment was rendered)			
			Lime Rock Park, LLC (in part) Planning and Zoning Commission of the Town of Salisbury (in part)			
			Lime Rock Citizens Council, LLC (in part)			
	Date of judgment(s) or decision(s) being appealed 07/17/2018		Date of issuance of notice on a order on any motion that would render judgment ineffective	у	Date for filing appeal extended to	
	Case type Civil		For Juvenite Cases Termination of Parental Rights Order of Temporary Custody			
	For Civil/Family Case Types, Major/Minor code:					
	A00		Other			
Appeal	Appeal filed by (Party name(s)) Lime Rock Park, LLC					
	From (the action that constitutes the appealable judgment or decision)					
	Judgment entered on Amended Memorandum of Decision dated July 17, 2018					
	If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order					
	is the appear is taken by the charte or conficulties, provide the marks or the judge who granted pornhassion to appear and the date or the order					
	Statutory Basis for Appeal to Supreme Court					
	By (Signature of counsel of record)		Telephone number Fax number Juris number (if applicable)			
	by (alignature of countries of record)	70	(203) 573-1200	(203) 575-2600	008512	
		Type name and address of counsel of record filing this appellate matter (This is your appearance; see Practice Book Section 62-8) E-mail address mcox@carmodylaw.com				
Appearance	Maureen Danehy Cox, Esq.					
	Carmody Torrance Sandak & Hennessey, LLP 50 Leavenworth Street, P. O. Box 1110, Waterbury, CT 06721-1110					
	"X" one if applicable					
	Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court.				to counsel of record who	
	Counsel or self-represented party who files this		Name of counsel of record . Juris number (If applicable)			
	appeal is appearing in place of: certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their					
Certification	names, addresses, e-mail addresses a	and telephone n	numbers; the appeal form has	been redacted or does	not contain any names or other	
	personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3.					
	Practice Book Section 60-8, attach a list with the name, address, e-mail address, and telephone		form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered			
			Signed (Counsel of record)		Date signed	
	number of each counsel of record and where the copy was delivered.	tne address	· hand	\sim	10/03/2018	
Required Documents	To be filed with the Appellate Clerk with					
	 Preliminary Statement of the Issues Court Reporter's Acknowledgment or Certificate Statement for Preargument Conference (form JD-SC-28A) Constitutionality Notice 					
	that no transcript is necessary 3. Docketing Statement 6. Sealing Order form, if any					
					Court Use Only Date and time filed	
Entry Fee F	Paid No Fees Required	ees, Costs, an	d Security walved by Judge (e	nter Judge's name bei	ow)	
Judge			Date waived			
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STATE OF CONNECTICUT

SUPREME COURT APPELLATE COURT

CAROLYN C. ZIOGAS CHIEF CLERK

231 CAPITOL AVENUE HARTFORD, CT 06106

SUSAN C. REEVE DEPUTY CHIEF CLERK TEL. (860) 757-2200

October 2, 2018

Dear Counsel of Record:

The attached appeal filed October 2, 2018, has been assigned docket number A.C. 42172 Lime Rock Park, LLC v. Planning and Zoning Commission of the Town of Salisbury et al.

The clerk assigned to this appeal is Attorney Cory Daige. He may be reached at (860)757-2149. Please note that clerks are not permitted to give legal advice.

The appellate clerk's office will be open from 8:30 a.m. until 5 p.m. on weekdays, with the exception of legal holidays and closures for exigent circumstances, such as inclement weather. The window at the appellate clerk's office will be open from 8:30 a.m. until 4:30 p.m. For information regarding when electronic documents are deemed filed, please see Practice Book § 63-2. For holiday and inclement weather questions, self-help publications and videos, and forms related to the appellate process, please consult the Judicial Branch website at www.jud.ct.gov.

You may now subscribe to e-mail updates for Supreme and Appellate Court Cases. To subscribe, please click on the link in the appeal case information section of your case detail web page. Please note that you will receive an email notification only if activity has occurred in your case. You will stop receiving updates if the case becomes sealed or protected pursuant to a court order or statute.

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Very truly yours,

/s/ Carolyn C. Ziogas Chief Clerk

L. Jeanne Dullea Assistant Clerk 860-757-2144 Carl D. Cicchetti Assistant Clerk 860-757-2223 Rene L. Robertson Assistant Clerk 860-757-2229 Luke P. Matyi Assistant Clerk 860-757-2249 Cory M. Daige Assistant Clerk 860-757-2149 Maurilio Amorim Assistant Clerk 860-757-2242 AC 42158

APPELLATE COURT

LIME ROCK PARK, LLC

STATE OF CONNECTICUT

٧.

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

SEPTEMBER 27, 2018

DOCKETING STATEMENT OF INTERVENOR LIME ROCK CITIZENS COUNCIL, LLC

Pursuant to Practice Book § 63-4(a)(3), intervenor Lime Rock Citizens Council, LLC hereby submits the following information:

A. Names and Addresses of Parties and Counsel

Plaintiff:

Lime Rock Park, LLC 497 Lime Rock Road Lakeville, CT 06039

Counsel:

John L. Cordani, Jr., Esq. <u>ilcordani@carmodylaw.com</u> Richard L. Street, Esq. rstreet@carmodylaw.com

Carmody Torrance Sandak & Hennessey LLP

195 Church Street P. O. Box 1950

New Haven, CT 06509-1950

Tel.: (203) 777-5501 Fax: (203) 784-3199

Juris No. 008512

James K. Robertson, Jr., Esq. irobertson@carmodylaw.com
Maureen Danehy Cox, Esq. mcox@carmodylaw.com

Carmody Torrance Sandak & Hennessey LLP

50 Leavenworth Street Waterbury, CT 06721-1110 Tel.: (203) 573-1200

Fax: (203) 575-2600 Juris No. 008512

Defendant:

Planning and Zoning Commission of the Town of Salisbury 27 Main Street P. O. Box 548 Salisbury, CT 06068

Counsel:

Charles R. Andres, Esq. charles.andres@leclairryan.com
LeClair Ryan
545 Long Wharf Drive
Ninth Floor
New Haven, CT 06511
Tel.: (203) 672-3204
Fax: (203) 672-3238

Fax: (203) 672-3238 Juris No. 428872

Intervening Defendant:

Lime Rock Citizens Council, LLC P. O. Box 509 Lakeville, CT 06039

Counsel:

Timothy S. Hollister
thollister@goodwin.com
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06013-1919
Tel.: (860) 251-5000

Fax: (860) 251-5318 Juris No. 057385

- B. Plaintiff, defendant, and intervening defendant petitioned for certification, and all were granted on September 20, 2018. As of this date, neither the plaintiff or defendant has filed their Appeal. Once they have filed their Appeals, the undersigned will file a Revised Docketing Statement with the Appellate Court Docket Numbers.
 - C. There were exhibits in the trial court.

INTERVENING DEFENDANT, LIME ROCK CITIZENS COUNCIL, LLC

Timothy S. Hollister

Timothy S. Hollister
thollister@goodwin.com
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06013-1919

Tel.: (860) 251-5000 Fax: (860) 251-5318 Juris No. 057385 Its Attorneys

CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 63-4, I hereby certify that this Docketing Statement complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy has been served electronically on the undersigned counsel, this 27th day of September, 2018.

John L. Cordani, Jr., Esq. ilcordani@carmodylaw.com
Richard L. Street, Esq. rstreet@carmodylaw.com
Carmody Torrance Sandak & Hennessey LLP
195 Church Street
P. O. Box 1950
New Haven, CT 06509-1950
Tel.: (203) 777-5501

Fax: (203) 777-5501 Fax: (203) 784-3199 Juris No. 008512 James K. Robertson, Jr., Esq. irobertson@carmodylaw.com
Maureen Danehy Cox, Esq.
mcox@carmodylaw.com
Carmody Torrance Sandak &
Hennessey LLP
50 Leavenworth Street
Waterbury, CT 06721-1110
Tel.: (203) 573-1200
Fax: (203) 575-2600
Juris No. 008512

Charles R. Andres, Esq.
charles.andres@leclairryan.com
LeClair Ryan
545 Long Wharf Drive
Ninth Floor
New Haven, CT 06511
Tel.: (203) 672-3204

Fax: (203) 672-3238 Juris No. 428872

Timothy S. Hollister

Commissioner of the Superior Court

AC 42171

LIME ROCK PARK, LLC

APPELLATE COURT

٧.

STATE OF CONNECTICUT

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

OCTOBER 2, 2018

DOCKETING STATEMENT BY DEFENDANT/APPELLANT PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

Pursuant to Practice Book § 63-4(a)(3), Defendant/Appellant Planning & Zoning Commission of Town of Salisbury hereby submits the following information:

A. Names and Addresses of Parties and Counsel

Plaintiff:

Lime Rock Park, LLC 497 Lime Rock Road Lakeville, CT 06039

Counsel:

James K. Robertson, Jr., Esq. <u>jrobertson@carmodylaw.com</u>
Maureen Danehy Cox, Esq. <u>mcox@carmodylaw.com</u>
Carmody Torrance Sandak & Hennessey LLP

50 Leavenworth Street Waterbury, CT 06721-1110

Tel.: (203) 573-1200 Fax: (203) 575-2600 Juris No. 008512

Richard L. Street, Esq.

<u>Rstreet@carmodylaw.com</u>

Carmody Torrance Sandak & Hennessey

LLP

195 Church Street

P. O. Box 1950

New Haven, CT 06509-1950

Tel.: (203) 777-5501 Fax: (203) 784-3199 Juris No. 008512

Defendant:

Planning and Zoning Commission of the Town of Salisbury 27 Main Street P. O. Box 548 Salisbury, CT 06068

Intervening Defendant:

Lime Rock Citizens Council, LLC P. O. Box 509 Lakeville, CT 06039

Counsel:

Charles R. Andres, Esq. charles.andres@ieclairryan.com
LeClairRyan, PLLC
545 Long Wharf Drive
Ninth Floor
New Haven, CT 06511
Tel.: (203) 672-3204
Fax: (203) 672-3238
Juris No. 428872

Counsel:

Timothy S. Hollister thollister@goodwin.com Shipman & Goodwin LLP One Constitution Plaza Hartford, CT 06013-1919 Tel.: (860) 251-5000 Fax: (860) 251-5318 Juris No. 057385

B. Plaintiff, defendant, and intervening defendant petitioned for certification, and all were granted on September 20, 2018. The intervening defendant filed its appeal on September 27, 2018 and has been assigned AC No. 42158. As of this date, the plaintiff has not filed its Appeal. Once all parties have filed their Appeals, the undersigned will file a Revised Docketing Statement with the Appellate Court Docket Numbers.

C. There were exhibits in the trial court.

THE DEFENDANT/APPELLANT, PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY

BY LECLAIRRYAN, PLLC

Charles R. Andres

545 Long Wharf Drive, Ninth Floor New Haven, Connecticut 06511

Telephone: 203.672.3204

Fax: 203.672.3238

Email: charles.andres@leclairryan.com

Juris No. 428872

CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

Pursuant to Practice Book §§ 62-7 and 63-4, I hereby certify that this Docketing Statement complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy has been served electronically on the undersigned counsel, this 2nd day of October, 2018:

Richard L. Street, Esq.

Rstreet@carmodylaw.com

Carmody Torrance Sandak & Hennessey LLP
195 Church Street
P.O. Box 1950

New Haven, CT 06509-1950

Telephone: 203.777.5501

Fax: 203.784.3199

Juris No. 008512

Timothy S. Hollister
thollister@goodwin.com
Shipman & Godwin LLP
One Constitution Plaza
Hartford, Connecticut 06013-1919
Telephone: 860.251.5000
Fax: 860.251.5318
Juris No. 057385

James K. Robertson, Jr., Esq.

irobertson@carmodylaw.com

Maureen Danehy Cox, Esq.

mcox@carmodylaw.com

Carmody Torrance Sandak & Hennessey LLP

50 Leavenworth Street

Waterbury, CT 06721-1110

Telephone: 203.573.1200

Fax: 203.575,2600

Charles R. Andres

905296072.1

Juris No. 008512

NO. AC-42172

APPELLATE COURT

LIME ROCK PARK, LLC

STATE OF CONNECTICUT

VS.

:

PLANNING AND ZONING COMMISSION

OF THE TOWN OF SALISBURY

OCTOBER 2, 2018

DOCKETING STATEMENT OF APPELLANT LIME ROCK PARK, LLC

Pursuant to Practice Book § 63-4(a)(3), the appellant Lime Rock Park, LLC hereby submits the following information:

A. Names and Addresses of Parties and Counsel

Plaintiff:

Counsel:

Lime Rock Park, LLC 497 Lime Rock Road Lakeville, CT 06039 James K. Robertson, Jr., Esq. <u>irobertson@carmodylaw.com</u>
Maureen Danehy Cox, Esq. mcox@carmodylaw.com

Carmody Torrance Sandak & Hennessey LLP

50 Leavenworth Street

P. O. Box 1110

Waterbury, CT 06721-1110 Tel.: (203) 573-1200 Fax: (203) 575-2600

Juris No. 008512

Richard L. Street, Esq. rstreet@carmodylaw.com

Carmody Torrance Sandak & Hennessey LLP

195 Church Street P. O. Box 1950

New Haven, CT 06509-1950

Tel.: (203) 777-5501 Fax: (203) 784-3199 Juris No. 012592

Defendant:

Planning and Zoning Commission of the Town of Salisbury
27 Main Street

P. O. Box 548

Salisbury, CT 06068

Counsel:

Charles R. Andres, Esq. charles.andres@leclairryan.com

LeClair Ryan

545 Long Wharf Drive, 9th Floor

New Haven, CT 06511 Tel: (203) 672-3204 Fax: (203) 672-3238

Juris No. 428872

Intervening Defendant:

Lime Rock Citizens Council, LLC P. O. Box 509

Lakeville, CT 06039

Counsel:

Timothy S. Hollister, Esq. thollister@goodwin.com
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06013-1919
Tel.: (860) 251-5000

Fax: (860) 251-5318 Juris No. 057385

- B. Plaintiff, Defendant, and Intervening Defendant all petitioned for certification, and all certifications were granted on September 20, 2018. The Intervening Defendant has filed its appeal, AC Docket No. AC 42158. As of this date, the Defendant has not filed its appeal. Once Defendant has filed its appeal, the undersigned will file a Revised Docketing Statement with all the Appellate Court docket numbers.
 - C. There were exhibits in the trial court.

THE PLAINTIFF/APPELLANT, LIME ROCK PARK, LLC

V:

77.5

Maureen Danehy Cox

For: Carmody Torrance Sandak &

Hennessey, LLP 50 Leavenworth Street

P. O. Box 1110

Waterbury, CT 06721-1110

Its Attorneys Juris No. 008512

Phone: (203) 573-1200 Fax: (203) 575-2600

mcox@carmodylaw.com

CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 63-4, I hereby certify that this Docketing Statement complies with all applicable rules of appellate procedure; that it does not contain any names of personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy has been served electronically on the undersigned counsel, this 2nd day of October, 2018.

Timothy S. Hollister, Esq.
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One Constitution Plaza
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thollister@goodwin.com
Counsel for Lime Rock Citizens Council, LLC

Charles R. Andres, Esq.
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Counsel for Planning and Zoning Commission
of the Town of Salisbury

Maureen Danehy Gox

Commissioner of the Superior Court

AC 42158

APPELLATE COURT

LIME ROCK PARK, LLC

STATE OF CONNECTICUT

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

OCTOBER 22, 2018

MOTION TO TRANSFER APPEAL TO SUPREME COURT

Pursuant to Practice Book §§ 65-2 and 66-2, the intervenor / co-defendant / appellant Lime Rock Citizens Council hereby moves to transfer this appeal from the Appellate Court to the Supreme Court. All parties agree that this appeal and the related companion appeals, AC 42171 and AC 42172, should be transferred to the Supreme Court.

BRIEF HISTORY.

This case is a zoning appeal, brought by Lime Rock Park, LLC, owner and operator of the Lime Rock automobile race track, operations buildings, and campground in Salisbury, from zoning regulations adopted in November 2015 that sought to clarify and codify limits on the Track's operations contained in injunctive orders dating back to 1959. A key issue in the 2015 amendments is the authority of the Salisbury Planning and Zoning Commission ("PZC") to continue, by regulation, a court order that has banned Sunday auto racing since 1959. Lime Rock Citizens Council, representing about 500 property owners within two miles of the Track, as well as a church, cemetery association, and classical music venue (Music Mountain), all of which are impacted by the Track, intervened on the side of the Salisbury PZC in 2016. After several oral arguments and supplements of the record, the trial court (the Hon. John D. Moore), in an extensive Memorandum, invalidated the TPZC's ban on Sunday racing, but upheld other limits on racing. All parties sought certification, which was granted in September 2018.

FACTUAL BASES FOR TRANSFER.

- 1. This case involves primarily an issue of statutory interpretation, whether General Statutes § 14-164a prompts a municipal zoning regulation that bans auto racing on Sundays. Thus, the main issue is one of law, subject to plenary review. The other issues decide by the trial court are of statewide importance, such as the authority of a zoning commission to regulate sources of noise, and to require a non-confirming use to apply for a special permit for its operations.
 - 2. The trial court has rendered an extensive Memorandum of Decision.
- 3. The parties are a large, regional commercial automobile race track facility; the Town of Salisbury and its Planning and Zoning Commission; and the Lime Rock Citizens Council, and thus at issue in this case are respective property rights of the parties within an entire region of the state.
 - 4. For these reasons, a final legal answer is needed from the Supreme Court.
- III. LEGAL GROUNDS FOR TRANSFER.
 - 1. Practice Book § 65-2 provides for transfer.
- 2. All parties agree that this docket number and the two companion appeals should be transferred to the Supreme Court.
- 3. Any Appellate Court decision will likely lead to a Supreme Court appeal, given the parties and the issues.

For these reasons, the Lime Rock Citizens Council moves for transfer to the Supreme Court.

INTERVENING DEFENDANT / APPELLANT, LIME ROCK CITIZENS COUNCIL, LLC

Bv

Timothy S. Hollister thollister@goodwin.com Shipman & Goodwin LLP One Constitution Plaza Hartford, CT 06013-1919 Tel.: (860) 251-5000

Fax: (860) 251-5318 Juris No. 057385 Its Attorneys

CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 66-3, I hereby certify that this Motion to Transfer Appeal to Supreme Court complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy of the Motion to Transfer to Supreme Court and Amended Memorandum of Decision have been served electronically on the undersigned counsel, this 22nd day of October, 2018.

John L. Cordani, Jr., Esq. <u>ilcordani@carmodylaw.com</u>
Richard L. Street, Esq. <u>rstreet@carmodylaw.com</u>
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Timothy S. Hollister

Commissioner of the Superior Court.

SUPREME COURT

STATE OF CONNECTICUT

AC 42158

LIME ROCK PARK, LLC

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY
JANUARY 17, 2019

ORDER

THE MOTION OF THE DEFENDANT-APPELLANT, FILED OCTOBER 22, 2018, TO TRANSFER APPEAL TO SUPREME COURT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY OR DERED THAT NO ACTION IS NECESSARY.

BY THE COURT,

______/S/___CORY M. DAIGE
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JANUARY 18, 2019 HON. JOHN D. MOORE COUNSEL OF RECORD CLERK, SUPERIOR COURT LLI-CV15-6013033-S

180150



STATE OF CONNECTICUT

SUPREME COURT APPELLATE COURT

CAROLYN C. ZIOGAS CHIEF CLERK

231 CAPITOL AVENUE HARTFORD, CT 06106

SUSAN C. REEVE DEPUTY CHIEF CLERK

TEL. (860) 757-2200 FAX (860) 757-2217

January 17, 2019

Re: A.C. 42158 Lime Rock Park, LLC v. Planning and Zoning Commission of the Town of Salisbury

Dear Counsel:

Pursuant to Practice Book §65-1, the above-captioned appeal has been transferred to the Supreme Court. The Supreme Court docket number assigned is **S.C. 20237.** Use only the Supreme Court number on all future filings in this appeal.

Briefing is in accordance with P.B. 67-1 et seq. Any due dates established in the Appellate Court remain in effect.

For further information, please see Chapter 67 of the Connecticut Practice Book and the Judicial Branch website.

The clerk assigned to your case is Attorney Cory M. Daige. This office has no information regarding the reason for transfer. However, if you have other questions concerning this appeal, Attorney Daige may be reached at 860-757-2149.

Very truly yours,

JS/

Carolyn C. Ziogas Chief Clerk

Notice Sent: January 17, 2019 Hon. John D. Moore Clerk, Superior Court (LLI-CV-15-6013033-S) Counsel of Record AC 42171

LIME ROCK PARK, LLC

APPELLATE COURT

٧.

STATE OF CONNECTICUT

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

OCTOBER 24, 2018

MOTION TO TRANSFER APPEAL TO SUPREME COURT

Pursuant to Practice Book §§ 65-2 and 66-2, the defendant / appellant Planning and Zoning Commission of the Town of Salisbury ("Commission") hereby moves to transfer this appeal from the Appellate Court to the Supreme Court. All parties agree that this appeal and the related companion appeals. AC 42158 and AC 42172, should be transferred to the Supreme Court.

I. BRIEF HISTORY

This case is a zoning appeal, brought by Lime Rock Park, LLC, owner and operator of the Lime Rock automobile race track, operations buildings, and campground in Salisbury, from zoning regulations adopted in November 2015 that sought to clarify and codify limits on the Track's permitted racing times. Since at least 1981, the zoning regulations provided that racing may be conducted at times permitted by "Court Order", i.e., a reference to a nuisance action brought by abutting property owners that established permitted race times. In an effort to divest the zoning regulations from dependence on judicial rulings in a private nuisance action where the Commission was not even a party, the Commission deleted the language in the regulations referencing the "Court Order", and

substituted instead language from the most recent judicial ruling setting forth the permitted race times. Lime Rock Citizens Council, representing about 500 property owners within two miles of the Track, as well as a church, cemetery association, and classical music venue (Music Mountain), all of which are impacted by the Track, intervened on the side of the Commission in 2016. After several oral arguments, supplements of the record and motions to re-argue, the trial court (the Hon. John D. Moore), in an extensive Memorandum, found that restrictions on Sunday racing were preempted by Gen. Stat § 14-164a, but that other restrictions on race times were proper. The court also dismissed other claims made by the plaintiff. All parties sought certification, which was granted in September 2018.

II. FACTUAL BASES FOR TRANSFER

- 1. This case involves primarily issues of statutory interpretation, whether General Statutes § 14-164a pre-empts a municipal zoning regulation that prohibits racing on Sundays, and whether Gen. Stat. § 8-13 applies to temporal (vs. spatial) standards in zoning regulations. Thus, the main issues are issues of law, subject to plenary review.
- 2. There are no Appellate or Supreme Court cases addressing Gen. Stat. § 14-164a, which has existed in some form since 1935. In addition, although a version of Gen. Stat. § 8-13 has been part of chapter 124 since its adoption, there are few cases that refer to it and no cases addressing the specific issue here, i.e., whether a municipal zoning regulation addressing a temporal (vs. spatial) standard prevails over a less restrictive state statute.

- 3. Questions of great statewide public importance are involved affecting all municipalities throughout the state. Under the court's interpretation, any municipal zoning regulations that do not allow motor vehicle racing after noon on Sundays are illegal because they violate Gen. Stat. § 14-164a. If the Salisbury Zoning Regulations, which allow racing on certain weekdays and some Saturdays, but not on Sundays, violates § 14-164a, then zoning regulations that prohibit auto racing altogether (including Sundays) also violate § 14-164a.
- 4. The other issues decided by the trial court are of statewide importance, such as the authority of a zoning commission to regulate sources of noise.
 - 5. The trial court has rendered an extensive Memorandum of Decision.
- 6. The parties are a large, regional commercial automobile race track facility; the Town of Salisbury and its Planning and Zoning Commission; and the Lime Rock Citizens Council, and thus at issue in this case are respective property rights of the parties within an entire region of the state.
 - 7. For these reasons, a final legal answer is needed from the Supreme Court.

III. LEGAL GROUNDS FOR TRANSFER

- 1. Practice Book § 65-2 provides for transfer.
- 2. All parties agree that this docket number and the two companion appeals should be transferred to the Supreme Court.
- 3. Any Appellate Court decision will likely lead to a Supreme Court appeal, given the parties and the issues.

For these reasons, the Commission moves for transfer to the Supreme Court.

THE DEFENDANT/APPELLANT,
PLANNING & ZONING COMMISSION OF
THE TOWN OF SALISBURY

BY LECLAIRRYAN, PLLC

Charles R. Andres

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Juris No. 428872

CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

Pursuant to Practice Book §§ 62-7 and 63-4, I hereby certify that this Motion to Transfer to Supreme Court complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy has been served electronically on the undersigned counsel, this 24th day of October, 2018:

Richard L. Street, Esq.

Rstreet@carmodylaw.com

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Juris No. 057385

James K. Robertson, Jr., Esq. <u>irobertson@carmodylaw.com</u>

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Fax: 203.575.2600 Juris No. 008512

Charles R. Andres

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SUPREME COURT

STATE OF CONNECTICUT

AC 42171

LIME ROCK PARK, LLC

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

JANUARY 17, 2019

CORRECTED O R D E R*

THE MOTION OF THE DEFENDANT-APPELLANT, FILED OCTOBER 24, 2018, TO TRANSFER APPEAL TO SUPREME COURT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED THAT NO ACTION IS NECESSARY.

BY THE COURT,

/S/

CORY M. DAIGE ASSISTANT CLERK-APPELLATE

*CORRECTED AS TO DOCKET NUMBER ONLY.

NOTICE SENT: JANUARY 18, 2019 HON. JOHN D. MOORE COUNSEL OF RECORD CLERK, SUPERIOR COURT LLI-CV15-6013033-S

180159



STATE OF CONNECTICUT

SUPREME COURT APPELLATE COURT

CAROLYN C. ZIOGAS CHIEF CLERK 231 CAPITOL AVENUE HARTFORD, CT 06106

SUSAN C. REEVE DEPUTY CHIEF CLERK TEL. (860) 757-2200 FAX (860) 757-2217

January 17, 2019

Re: A.C. 42171 Lime Rock Park, LLC v. Planning and Zoning Commission of the Town of Salisbury

Dear Counsel:

Pursuant to Practice Book §65-1, the above-captioned appeal has been transferred to the Supreme Court. The Supreme Court docket number assigned is **S.C. 20238.** Use only the Supreme Court number on all future filings in this appeal.

Briefing is in accordance with P.B. 67-1 et seq. Any due dates established in the Appellate Court remain in effect.

For further information, please see Chapter 67 of the Connecticut Practice Book and the Judicial Branch website.

The clerk assigned to your case is Attorney Cory M. Daige. This office has no information regarding the reason for transfer. However, if you have other questions concerning this appeal, Attorney Daige may be reached at 860-757-2149.

Very truly yours,

_____/S/___ Carolyn C. Ziogas Chief Clerk

Notice Sent: January 17, 2019 Hon. John D. Moore Clerk, Superior Court (LLI-CV-15-6013033-S) Counsel of Record AC 42172

APPELLATE COURT

LIME ROCK PARK, LLC

STATE OF CONNECTICUT

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

OCTOBER 24, 2018

MOTION TO TRANSFER APPEAL TO SUPREME COURT

Pursuant to Practice Book §§ 65-2 and 66-2, the plaintiff / appellant Lime Rock Park, LLC hereby moves to transfer this appeal from the Appellate Court to the Supreme Court. All parties to this appeal agree that this appeal and the related appeals, AC 42171 and AC 42172, should be transferred to the Supreme Court.

I. BRIEF HISTORY.

Plaintiff / Appellant Lime Rock Park, LLC appealed from the Town of Salisbury Planning and Zoning Commission's 2015 adoption of amendments to its zoning regulations on various grounds including, *inter alia*, that the amendments violated state laws regarding racing activities and noise regulation, that the amendments failed to further any legitimate land use interest, and that the amendments violated the rights of the one entity they regulated, Lime Rock Park, LLC. The defendant Commission appeared and participated in the appeal, along with Lime Rock Citizens Council, LLC ("Council") which was granted intervenor status. After briefing and several hearings, the court (the Honorable J.D. Moore), issued a Memorandum of Decision whereby the court sustained the appeal in part and denied it in part. Thereafter, each of the parties moved for reargument and/or reconsideration of various parts of the Decision, with supporting memoranda. The

(W3054011)

court ordered reargument, and the parties filed various objections and memoranda related to the issues raised. The court heard argument on the motions and then sought additional information regarding the zoning regulations. On July 17, 2018, the court issued an Amended Memorandum of Decision. Thereafter, Lime Rock Park, LLC and the other parties each filed separate petitions for certification to the Appellate Court, which petitions were granted. Lime Rock Park, LLC then filed this appeal; the Commission and the Council also filed appeals.

II. FACTUAL BASES FOR TRANSFER.

- 1. This case involves issues of statutory interpretation and preemption, including, inter alia, whether General Statutes § 14-164a bars a municipal land use board from enacting regulations that purport to prohibit racing on days and during hours that are authorized under the statute, and whether regulations that purport to limit unmuffiered racing are subject to the mandatory approval provisions of Connecticut General Statute §22a-73(c). Thus, the main issues are issues of law, subject to plenary review.
- 2. The trial court rendered a lengthy (97 pages) Amended Memorandum of Decision.
- 3. All three parties to the underlying appeal applied for and were granted certification to appeal to the Appellate Court and all have filed their appeals. It is likely that one or more of the parties will seek further review of any decision rendered by the Appellate Court.

4. For these reasons, a final legal answer is needed from the Supreme Court.

III. LEGAL GROUNDS FOR TRANSFER.

- 1. Practice Book § 65-2 provides for transfer.
- 2. All parties agree that the three related appeals should be transferred.
- 3. Any Appellate Court decision will likely lead to a Supreme Court appeal, given the parties and the issues.

For these reasons, Plaintiff / Appellant Lime Rock Park, LLC moves for transfer to the Supreme Court.

A copy of the trial court's Amended Memorandum of Decision dated July 17, 2018 is attached.

PLAINTIFF / APPELLANT, LIME ROCK PARK, LLC

By_

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Carmody Torrance Sandak &

Hennessey LLP 50 Leavenworth Street

Waterbury, CT 06721-1110

Tel.: (203) 573-1200

Fax: (203) 575-2600

Juris No. 008512

CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 66-3, I hereby certify that this Motion to Transfer Appeal to Supreme Court complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information—that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy has been served electronically on the undersigned counsel, this 24th day of October, 2018.

Timothy S. Hollister, Esq.
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Hartford, CT 06103-1919
thollister@goodwin.com
Counsel for Lime Rock Citizens Council,
LLC

Charles R. Andres, Esq.
LeClair Ryan
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charles.andres@leclairryan.com
Counsel for Planning and Zoning
Commission
of the Town of Salisbury

Maureen Danehy Cox

Commissioner of the Superior Court

SUPREME COURT

STATE OF CONNECTICUT

AC 42172

LIME ROCK PARK, LLC

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY
JANUARY 17, 2019

ORDER

THE MOTION OF THE PLAINTIFF-APPELLANT, FILED OCTOBER 29, 2018, TO TRANSFER APPEAL TO SUPREME COURT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED THAT NO ACTION IS NECESSARY.

BY THE COURT,

CORY M. DAIGE
ASSISTANT CLERK-APPELLATE

NOTICE SENT: JANUARY 18, 2019 HON. JOHN D. MOORE COUNSEL OF RECORD CLERK, SUPERIOR COURT LLI-CV15-6013033-S

180165



STATE OF CONNECTICUT

SUPREME COURT APPELLATE COURT

CAROLYN C. ZIOGAS CHIEF CLERK 231 CAPITOL AVENUE HARTFORD, CT 06106

SUSAN C. REEVE DEPUTY CHIEF CLERK TEL. (860) 757-2200 FAX (860) 757-2217

January 17, 2019

Re: A.C. 42172 <u>Lime Rock Park, LLC</u> v. <u>Planning and Zoning Commission of the Town</u> of Salisbury

Dear Counsel:

Pursuant to Practice Book §65-1, the above-captioned appeal has been transferred to the Supreme Court. The Supreme Court docket number assigned is S.C. 20239. Use only the Supreme Court number on all future filings in this appeal.

Briefing is in accordance with P.B. 67-1 et seq. Any due dates established in the Appellate Court remain in effect.

For further information, please see Chapter 67 of the Connecticut Practice Book and the Judicial Branch website.

The clerk assigned to your case is Attorney Cory M. Daige. This office has no information regarding the reason for transfer. However, if you have other questions concerning this appeal, Attorney Daige may be reached at 860-757-2149.

Very truly yours,

/S/

Carolyn C. Ziogas Chief Clerk

Notice Sent: January 17, 2019 Hon. John D. Moore Clerk, Superior Court (LLI-CV-15-6013033-S) Counsel of Record SC 20237

SUPREME COURT

LIME ROCK PARK, LLC

STATE OF CONNECTICUT

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

FEBRUARY 26, 2019

MOTION, ON CONSENT, FOR PERMISSION TO FILE JOINT APPENDIX PART ONE IN SC 20237

With the consent of plaintiff / appellee, Lime Rock Park, and co-defendant / appellee, the Planning and Zoning Commission of the Town of Salisbury, intervenor / co-defendant / appellant, Lime Rock Citizens Council (the "Citizens Council"), hereby moves for permission to file a joint Appendix Part One in the above-captioned action and the related actions docketed at SC 20238 (in which the Planning and Zoning Commission is the appellant) and SC 20239 (in which Lime Rock Park is the appellant).

I. BRIEF HISTORY.

This case is a zoning appeal, brought by Lime Rock Park, LLC, owner and operator of the Lime Rock automobile race track, operations buildings, and campground in Salisbury, from zoning regulations adopted in November 2015 that sought to clarify and codify limits on the Track's operations contained in injunctive orders dating back to 1959. A key issue in the 2015 amendments is the authority of the Salisbury Planning and Zoning Commission ("PZC") to continue, by regulation, a court order that has banned Sunday auto racing since 1959. Lime Rock Citizens Council, representing about 500 property owners within two miles of the Track, as well as a church, cemetery association, and classical music venue (Music Mountain), all of which are impacted by the Track, intervened on the side of the Salisbury PZC in 2016. After several oral arguments and supplements of the record, the trial court (the Hon. John D. Moore), in an extensive memorandum of decision,

invalidated the TPZC's ban on Sunday racing, but upheld other limits on racing. All parties sought certification, which was granted in September 2018. On January 17, 2019, this appeal was transferred to the Supreme Court. The separate appeals filed by Lime Rock Park and the Commission were also transferred to the Supreme Court. See SC 20238 and SC 20239.

FACTUAL BASES FOR PERMISSION TO FILE JOINT APPENDIX PART ONE.

- 1. Practice Book § 67-8 requires an appellant to file an Appendix to its Appeal Brief, which Appendix shall be divided into two parts. Appendix Part One must contain various items from the record, including but not limited to the docket sheets; all relevant pleadings, motions requests, findings, and opinions or decisions of the trial court; and the signed Judgment File.
- 2. Because each of the parties to this action sought, and was granted, certification to appeal, three separate appeals arising from the same Superior Court Memorandum of Decision are currently pending before this Court.
- 3. Because each of the parties to this action is an appellant in one of the three related appeals, each party must file an Appendix Part One pursuant to Practice Book § 67-8.
- 4. The Appendix Part One filed in each of the three related appeals will be identical and voluminous, due in part to the extensive Memorandum of Decision issued by the Superior Court.
- 5. Accordingly, to avoid unnecessary duplication and to reduce the volume of the record filed in each appeal, the Citizens Council seeks to file one joint Appendix Part One in this appeal, SC 20237, which shall also operate as the Appendix Part One in the appeals docketed at SC 20238 and SC 20239.
 - 6. Corresponding motions have also been filed in SC 20238 and SC 20239.

III. LEGAL GROUNDS FOR PERMISSION TO FILE JOINT APPENDIX PART ONE.

- 1. Practice Book § 67-8 requires an appellant to file an Appendix to its Appeal Brief, which Appendix shall be divided into two parts. Part One of the appellant's Appendix must contain various items from the record, including the docket sheets; all relevant pleadings, motions requests, findings, and opinions or decisions of the trial court; and the signed Judgment File.
- 2. All parties agree that the filing of one joint Appendix Part One in the abovecaptioned action will be more efficient and avoid unnecessary duplication in the record.

For these reasons, the Lime Rock Citizens Council respectfully requests permission to file a joint Appendix Part One.

INTERVENING DEFENDANT / APPELLANT, LIME ROCK CITIZENS COUNCIL, LLC

Timothy S. Hollister

thollister@goodwin.com

Andrea L. Gomes

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Tel.: (860) 251-5000

Fax: (860) 251-5318

Juris No. 057385

Its Attorneys

CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 66-3, I hereby certify that this Motion, On Consent, for Permission to File Joint Appendix Part One in SC 20237 complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy of the Motion, On Consent, for Permission to File Joint Appendix Part One in SC 20237 has been served electronically on the undersigned counsel, this 26th day of February, 2019.

Maureen Danehy Cox, Esq. mcox@carmodylaw.com Carmody Torrance Sandak & Hennessey LLP 50 Leavenworth Street Waterbury, CT 06721-1110 Tel.: (203) 573-1200 Fax: (203) 575-2600 Juris No. 008512

Charles R. Andres, Esq. charles.andres@leclairryan.com LeClair Ryan 545 Long Wharf Drive Ninth Floor New Haven, CT 06511 Tel.: (203) 672-3204

Fax: (203) 672-3238

Juris No. 428872

Timothy S. Hollister

Commissioner of the Superior Court

SUPREME COURT

STATE OF CONNECTICUT

SC 20237

LIME ROCK PARK, LLC

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

FEBRUARY 26, 2019

ORDER

THE MOTION OF THE DEFENDANT-APPELLANT, FILED FEBRUARY 26, 2019, ON CONSENT, FOR PERMISSION TO FILE JOINT APPENDIX PART ONE IN SC 20237, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY OR DERED GRANTED. A JOINT APPENDIX PART ONE SHALL BE FILED IN SC 20237.

BY THE COURT,

______/S/ CORY M. DAIGE ASSISTANT CLERK-APPELLATE

NOTICE SENT: FEBRUARY 27, 2019 COUNSEL OF RECORD

180298

SC 20238

LIME ROCK PARK, LLC

SUPREME COURT

٧.

STATE OF CONNECTICUT

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY, ET AL.

FEBRUARY 26, 2019

MOTION, ON CONSENT, FOR PERMISSION TO FILE JOINT APPENDIX PART ONE IN SC 20238

With the consent of plaintiff / appellee, Lime Rock Park, LLC and intervenor / co-defendant / appellee, Lime Rock Citizens Council, co-defendant / appellant, the Planning and Zoning Commission of the Town of Salisbury ("Commission"), hereby moves for permission to file a joint Appendix Part One in the above-captioned action and the related actions docketed at SC 20237 (in which Lime Rock Citizens Council is the appellant) and SC 20239 (in which Lime Rock Park, LLC is the appellant).

I. <u>BRIEF HISTORY OF THE CASE.</u>

This case is a zoning appeal, brought by Lime Rock Park, LLC, owner and operator of the Lime Rock automobile race track ("the Track"), operations buildings, and campground in Salisbury, from amendments to zoning regulations adopted in November 2015 that sought to clarify zoning regulations for a "Track for Racing Motor Vehicles", which is allowed as a special permit use in the RE Zoning District. Since at least 1985, the regulation had provided that motor vehicle racing was allowed only at hours permitted by a "court order", i.e., a reference to a court decision in a private nuisance action against the Track brought by property owners in the vicinity of the Track. (The Commission is not a party in that action.) In an effort to separate the zoning regulations from the private nuisance action, the Commission deleted all references to the "court order", and instead

inserted the permitted race times that had been agreed to by the parties in most recent stipulated judgment in that case, which included a prohibition of racing at all hours on Sundays. After several oral arguments and supplements of the record, the trial court (the Hon. John D. Moore), in an extensive Memorandum, invalidated the Commission's prohibition on Sunday racing, but upheld other limits on racing. All parties sought certification, which was granted in September 2018, and all parties have filed appeals (SC 20237 – Lime Rock Citizens Council; SC 20238 – Planning and Zoning Commission of the Town of Salisbury; SC 20239 – Lime Rock Park, LLC).

II. FACTUAL GROUNDS UPON WHICH MOVING PARTY RELIES.

- 1. Practice Book § 67-8 requires an appellant to file an Appendix to its Appeal Brief, which Appendix shall be divided into two parts. Appendix Part One must contain various items from the record, including but not limited to the docket sheets; all relevant pleadings, motions requests, findings, and opinions or decisions of the trial court; and the signed Judgment File.
- Because each of the parties to this action sought, and was granted,
 certification to appeal, three separate appeals arising from the same Superior Court
 Memorandum of Decision are currently pending before this Court.
- 3. Because each of the parties to this action is an appellant in one of the three related appeals, each party must file an Appendix Part One pursuant to Practice Book § 67-8.
- 4. The Appendix Part One filed in each of the three related appeals will be identical and voluminous, due in part to the extensive Memorandum of Decision issued by the Superior Court.

- 5. Accordingly, to avoid unnecessary duplication and to reduce the volume of the record filed in each appeal, the Commission seeks to file one joint Appendix Part One in this appeal, SC 20238, which shall also operate as the Appendix Part One in the appeals docketed at SC 20237 and SC 20239.
 - 6. Corresponding motions are being filed in SC 20237 and SC 20239.

III. LEGAL GROUNDS UPON WHICH MOVING PARTY RELIES.

- 1. Practice Book § 67-8 requires an appellant to file an Appendix to its Appeal Brief, which Appendix shall be divided into two parts. Part One of the appellant's Appendix must contain various items from the record, including the docket sheets; all relevant pleadings, motions requests, findings, and opinions or decisions of the trial court; and the signed Judgment File.
- 2. All parties agree that the filing of one joint Appendix Part One in the above-captioned action will be more efficient and avoid unnecessary duplication in the record.

 For these reasons, the Commission respectfully requests permission to file a joint Appendix Part One.

THE DEFENDANT/APPELLANT, PLANNING & ZONING COMMISSION OF THE TOWN OF SALISBURY

BY LECLAIRRYAN, PLLC

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Juris No. 428872

By:

CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF SERVICE

Pursuant to Practice Book §§ 62-7 and 66-3, I hereby certify that this Motion, On Consent, for Permission to File Joint Appendix Part One in SC 20238 complies with all applicable rules of appellate procedure and that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law. I further certify that the foregoing Motion, On Consent, for Permission to File Joint Appendix Part One in SC 20238 was electronically filed this 26th day of February, 2019 and that a copy was e-mailed to all counsel of record and the undersigned counsel's client as noted below on February 26, 2019. Counsel consents to the filing of this Motion electronically.

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Charles R. Andres

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SUPREME COURT

STATE OF CONNECTICUT

SC 20238

LIME ROCK PARK, LLC

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY FEBRUARY 26, 2019

ORDER

THE MOTION OF THE DEFENDANT-APPELLANT, FILED FEBRUARY 26, 2019, ON CONSENT, FOR PERMISSION TO FILE JOINT APPENDIX PART ONE IN SC 20238, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY OR DERED GRANTED. A JOINT APPENDIX PART ONE SHALL BE FILED IN SC 20237.

BY THE COURT,

CORY M. DAIGE
ASSISTANT CLERK-APPELLATE

NOTICE SENT: FEBRUARY 27, 2019 COUNSEL OF RECORD

180299

SC 20239

SUPREME COURT

LIME ROCK PARK, LLC

STATE OF CONNECTICUT

٧.

PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY

FEBRUARY 26, 2019

MOTION, ON CONSENT, FOR PERMISSION TO FILE JOINT APPENDIX PART ONE SC 20239

Plaintiff/Appellant Lime Rock Park, LLC hereby moves for permission to file a joint Appendix Part One for the above-captioned action and the related actions docketed at SC 20237, in which Lime Rock Citizens Council, LLC is the appellant, and SC 20238, in which the Planning and Zoning Commission of the Town of Salisbury is the appellant (the "Related Appeals"). Upon information and belief, the Planning and Zoning Commission of the Town of Salisbury and Lime Rock Citizens Council, LLC intend to file similar motions in the Related Appeals. The Planning and Zoning Commission of the Town of Salisbury and Lime Rock Citizens Council, LLC consent to this motion.

I. BRIEF HISTORY.

Plaintiff / Appellant Lime Rock Park, LLC appealed from the Town of Salisbury

Planning and Zoning Commission's 2015 adoption of amendments to its zoning regulations
on various grounds including, *inter alia*, that the amendments violated state laws regarding
racing activities and noise regulation, that the amendments failed to further any legitimate
land use interest, and that the amendments violated the rights of the one entity they
regulated, Lime Rock Park, LLC. The defendant Commission appeared and participated in
the appeal, along with Lime Rock Citizens Council, LLC ("Council") which was granted
intervenor status. After briefing and several hearings, the court (the Honorable J.D. Moore),

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issued a Memorandum of Decision whereby the court sustained the appeal in part and denied it in part. Thereafter, each of the parties moved for reargument and/or reconsideration of various parts of the Decision, with supporting memoranda. The court ordered reargument, and the parties filed various objections and memoranda related to the issues raised. The court heard argument on the motions and then sought additional information regarding the zoning regulations. On July 17, 2018, the court issued an Amended Memorandum of Decision. Thereafter, Lime Rock Park, LLC and the other parties each filed separate petitions for certification to the Appellate Court, which petitions were granted. Thereafter, this appeal and the Related Appeals were all transferred to the Supreme Court.

II. FACTUAL BASES FOR PERMISSION TO FILE JOINT APPENDIX PART ONE.

- 1. Practice Book § 67-8 requires an appellant to file an Appendix to its appeal brief, which Appendix shall be divided into two parts. Appendix Part One must contain various items from the record, including but not limited to the docket sheets; all relevant pleadings, motions, requests, findings, and opinions or decisions of the trial court; and the signed judgment file.
- 2. Because each of the parties to this action sought, and was granted, certification to appeal, three separate appeals arising from the same Superior Court memorandum of decision are currently pending before this Court.
- 3. Because each of the parties to this action is an appellant in one of the three related appeals, each party must file an Appendix Part One pursuant to Practice Book § 67-8.
- 4. The Appendix Part One filed in each of the three related appeals will be identical and voluminous, due in part to the extensive memorandum of decision and amended memorandum of decision issued by the Superior Court.

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{W3091658}

- 5. Accordingly, to avoid unnecessary duplication and to reduce the volume of the record filed in each appeal, the parties seek to file one joint Appendix Part One. The Appendix Part One will be filed in appeal SC 20237, but shall also operate as the Appendix Part One in the appeals docketed at SC 20238 and SC 20239.
 - 6. Corresponding motions have also been filed in SC 20237 and SC 20238.

III. LEGAL GROUNDS FOR PERMISSION TO FILE JOINT APPENDIX PART ONE.

- 1. Practice Book § 67-8 requires an appellant to file an Appendix to its Brief, which Appendix shall be divided into two parts. Part One of the appellant's Appendix must contain various items from the record, including the docket sheets; all relevant pleadings, motions, requests, findings, and opinions or decisions of the trial court; and the signed judgment file.
- 2. All parties agree that the filing of one joint Appendix Part One in the above-captioned action will be more efficient and avoid unnecessary duplication in the record.

For these reasons, Lime Rock Park, LLC respectfully requests that it and the appellants in the Related Appeals be granted permission to file a joint Appendix Part One.

PLAINTIFF / APPELLEE, LIME ROCK PARK, LLC

By

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Juris No. 008512

CERTIFICATE OF COMPLIANCE AND CERTIFICATION OF SERVICE

Pursuant to Practice Book §§ 62-7 and 66-3, I hereby certify that this Motion for Permission to File Joint Appendix Part One complies with all applicable rules of appellate procedure; that it does not contain any names or personally identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and that a copy of the Motion for Permission to File Joint Appendix Part One has been served electronically on the undersigned counsel, this 26th day of February, 2019:

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Counsel for Lime Rock Citizens Council, LLC

Maureen Danehy Cox

Commissioner of the Superior Court

SUPREME COURT

STATE OF CONNECTICUT

SC 20239

LIME ROCK PARK, LLC

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PLANNING AND ZONING COMMISSION OF THE TOWN OF SALISBURY FEBRUARY 26, 2019

ORDER

THE MOTION OF THE PLAINTIFF-APPELLANT, FILED FEBRUARY 26, 2019, ON CONSENT, FOR PERMISSION TO FILE JOINT APPENDIX PART ONE SC 20239, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY **O R D E R E D**GRANTED. A JOINT APPENDIX PART ONE SHALL BE FILED IN SC 20237.

BY THE COURT,

_____/S/ CORY M. DAIGE ASSISTANT CLERK-APPELLATE

NOTICE SENT: FEBRUARY 27, 2019 COUNSEL OF RECORD

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